



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

WRIT PETITION NO. 2462 OF 2010

ALONG WITH

WRIT PETITION NO. 1051 OF 2013

Breach Candy Hospital Trust	}	
Company incorporated under the	}	
Companies Act, 1913, having its	}	
Registered office at 60, Bhulabhai	}	
Desai Road, Mumbai 400 026	}	... Petitioner

V/s.

1. Chief Commissioner of Income Tax	}	
Aaykar Bhavan, M. K. Road,	}	
Mumbai, Maharashtra 400 020.	}	
 2. Union of India	 }	
Ministry of Law & Justice	}	
Department of Legal Affairs	}	
Branch Secretariat, 2 nd Floor	}	
Aaykar Bhavan Annexe	}	
Mumbai, Maharashtra 400 020.	}	... Respondents

Mr. Jehangir D. Mistri, Senior Advocate a/w Mr. Fenil Bhatt and Mr. Danish Qureshi
i/b Mahimtura & Co. for Petitioner.

Mr. Suresh Kumar, Advocate for the Respondents.

**CORAM : B.P. COLABAWALLA &
FARHAN P. DUBASH, JJ.**

**RESERVED ON : 17th SEPTEMBER 2026
PRONOUNCED ON : 12th OCTOBER 2026**

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

1. The two petitions were initially reserved for judgment on 17th September 2026. However, during the course of dictating the judgment, certain factual queries arose which required clarification. Accordingly, the petitions were placed on board on 7th October 2026 under the caption, ‘*For Directions*’. On the said date, the Petitioner filed an additional Affidavit dated 7th October 2026, clarifying the factual position. Accordingly, the petitions were once again reserved for judgment on the same date.
2. Section 10(23C)(via) of the Income-tax Act, 1961 (“**the Act**”) permits receipts on behalf of a hospital to be excluded from the computation of its total income, provided the hospital satisfies the statutory requirements and obtains approval from the prescribed authority. Breach Candy Hospital Trust, the Petitioner in both petitions before us, had sought such approval. By orders dated 15th April 2010 and 28th September 2012, the Chief Commissioner of Income-tax, Respondent No. 1, rejected its applications for Assessment Years 2002-03 to 2010-11 and Assessment Year 2011-12 and subsequent years, respectively. These orders are challenged in the present petitions.
3. The central question to be decided in both petitions is whether the Hospital satisfies the requirement of “*existing solely for philanthropic purposes and not for purposes of profit*” under sub-clause (via) of section 10(23C) of the Act. We

must consider the meaning of that requirement and whether the grounds relied upon by Respondent No. 1 justify the refusal of approval.

4. As the principal issues overlap, the parties have agreed that both petitions may be disposed of by a common judgment.

I. **CHRONOLOGY OF RELEVANT DATES AND EVENTS**

5. The statutory background and the material events leading to these two petitions may be set out as follows:

- (a) The Petitioner was incorporated on 23rd July 1946 under the Indian Companies Act, 1913. Its Memorandum and Articles of Association provide, *inter alia*, for the establishment and maintenance of a hospital for philanthropic purposes and not for profit, for persons of any community. These instruments require the Petitioner's income and property to be applied solely towards its objects and prohibit their distribution by way of profit to its members. They also provide that upon dissolution, the monies remaining with the Petitioner shall be distributed for charitable purposes. The Petitioner was also registered as a public trust under the Bombay Public Trusts Act, 1950 on 22nd September 1953 and subsequently obtained the tax registration and approval referred to below.

- (b) The Finance Act, 1970 inserted clause (22A) in section 10 of the Act with effect from 1st April 1970. Read with the opening words of section 10, the provision excluded the following income from the computation of total income:

“(22A) any income of a hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit.”

The provision thus contained the requirements of an exclusively philanthropic purpose and the absence of a profit purpose, but did not require a separate approval from a prescribed authority.

- (c) The Petitioner claimed exemption under section 10(22A) from Assessment Year 1970-71 onwards. For Assessment Years 1970-71 to 1995-96, the exemption was allowed, save that its claim for Assessment Year 1989-90 was initially rejected by the Assessing Officer and subsequently allowed in appeal, as noticed below.
- (d) For Assessment Years 1996-97 to 1998-99, the Assessing Officer again denied exemption under section 10(22A). He concluded that the Hospital did not exist solely for philanthropic purposes, relying principally on its substantial surpluses, the small proportion of expenditure devoted to poor and needy patients, and the profits generated by certain activities,

including the sale of medical supplies. The Petitioner challenged these assessment orders before the Commissioner of Income-tax (Appeals).

- (e) Meanwhile, the Finance (No. 2) Act, 1998 omitted section 10(22A) and introduced, with effect from 1st April 1999, the relevant hospital exemptions in section 10(23C), including sub-clause (via). The latter provision retained the requirement that the hospital *exist solely for philanthropic purposes and not for purposes of profit*, but introduced an additional requirement of approval by the prescribed authority. Insofar as relevant, section 10(23C) provided for the exclusion of income received by any person on behalf of:

“(via) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (iiia) or sub-clause (iiiae) and which may be approved by the prescribed authority:”

The first proviso required an application in the prescribed form and manner for the grant or continuance of the exemption. The second proviso empowered the prescribed authority to call for documents or information and to make inquiries to satisfy itself about the genuineness of the institution's activities.

- (f) Rule 2CA of the Income-tax Rules, 1962 prescribed the authority and procedure for applications under section 10(23C)(via). The Central Board of Direct Taxes (“**CBDT**”) initially exercised the approval function. Under the subsequently amended rule, the Chief Commissioner or Director General became the prescribed authority, subject to the transitional provision concerning applications already received by the CBDT. It was under this statutory and regulatory framework that the Petitioner sought approval for the succeeding assessment years and that Respondent No. 1 dealt with the applications which culminated in the two impugned orders.
- (g) Independently of this approval regime, the Petitioner was granted registration under section 12A of the Act on 26th July 1999. The Petitioner also held approval under section 80G. These registrations and approvals form part of the background on which the Petitioner relies, though their bearing on its entitlement under section 10(23C)(via) is disputed by the Revenue.
- (h) By a common order dated 22nd January 2002 for Assessment Years 1997-98 and 1998-99, the Commissioner of Income-tax (Appeals) allowed the Petitioner’s claim under section 10(22A). The Commissioner held, *inter alia*, that the generation of a surplus did not by itself displace the Hospital’s philanthropic character, and that the capital expenditure

incurred on its modernisation and expansion had to be considered since the ultimate destination of the profit was material for determining the philanthropic purpose of the institution. The Petitioner's case for Assessment Year 1996-97 was dealt with on the same basis.

- (i) In the proceedings concerning approval under section 10(23C)(via) for Assessment Years 1999-2000 to 2001-02, the Director General of Income-tax (Exemptions), by communications dated 12th February 2002 and 1st March 2002, called upon the Petitioner to explain, among other matters, its surpluses and the extent of treatment provided to poor and indigent patients. The Petitioner furnished a detailed response on 15th March 2002, relying on its objects, the prohibition against distribution of profits, the treatment provided to poor patients, and the application of its funds towards medical equipment and hospital facilities.
- (j) By an order dated 22nd May 2002, the Commissioner of Income-tax (Appeals) also allowed the Petitioner's claim under section 10(22A) for Assessment Year 1989-90. The Revenue did not challenge that order further.
- (k) On 20th September 2002, the Petitioner applied for renewal of approval under section 10(23C)(via) for Assessment Years 2002-03 to 2004-05.

- (l) By an order dated 10th April 2003, the CBDT granted approval under section 10(23C)(via) for Assessment Years 1999-2000 to 2001-02, following the inquiry and the Petitioner's response referred to above.
- (m) On 10th December 2004, the Income Tax Appellate Tribunal disposed of the Revenue's appeals arising from the earlier proceedings under section 10(22A). The Revenue had not pursued a challenge to the allowance of exemption for the Hospital's activities; the dispute pursued before the Tribunal concerned whether interest income was also covered by that exemption. The Tribunal decided that issue in favour of the Petitioner.
- (n) The Petitioner thereafter submitted applications dated 26th September 2005 and 31st March 2008 seeking renewal of approval under section 10(23C)(via) for Assessment Years 2005-06 to 2007-08 and Assessment Years 2008-09 to 2010-11, respectively. Together with the application dated 20th September 2002, these applications covered Assessment Years 2002-03 to 2010-11.
- (o) During this period, the Petitioner also relied on its compliance with the scheme for charitable hospitals approved by this Court on 17th August 2006 in Writ Petition No. 3132 of 2004 under section 41AA of the Bombay Public Trusts Act, 1950. The scheme provided, among other things, for beds and treatment for indigent patients and persons belonging to weaker sections, and for an Indigent Patients Fund. The Petitioner

placed its compliance reports before the authorities. It further relied on the assessment proceedings in which its alternative claim to exemption under section 11 had been accepted.

- (p) By an order dated 31st March 2009, Respondent No. 1 rejected the applications for renewal covering Assessment Years 2002-03 to 2010-11. The Petitioner challenged that order in Writ Petition No. 1383 of 2009.
- (q) By an order dated 24th August 2009, this Court set aside the order dated 31st March 2009 and remitted the matter to Respondent No. 1 for reconsideration. The Court directed attention, in particular, to the Petitioner's explanation concerning its financial position over a period of years and to the provisions of its Memorandum and Articles of Association. The Court also considered the treatment provided at concessional rates to employees and the scope of philanthropy. The applications were thus restored for a fresh decision.
- (r) Following the remand, Respondent No. 1 issued a notice dated 2nd February 2010. The Petitioner appeared and furnished submissions dated 9th March 2010, 12th April 2010 and 14th April 2010. It reiterated its reliance on the earlier exemptions and approval, the application of funds towards hospital facilities, its computation of the cumulative deficit, and the treatment provided to poor and indigent patients.

- (s) By an order dated 15th April 2010 (“**first impugned order**”) Respondent No. 1 again rejected the applications for renewal for Assessment Years 2002-03 to 2010-11. He relied, *inter alia*, on the recurring surpluses, rejected the Petitioner’s computation of its deficit, and considered the extent of concessional treatment and the arrangements concerning consultant doctors’ fees. The Petitioner instituted the first petition, namely, Writ Petition No. 2462 of 2010 challenging that order and seeking consequential directions for approval.
- (t) On 6th December 2010, this Court dismissed the Revenue’s Income Tax Appeal No. 420 of 2005 concerning Assessment Year 1998-99. The dismissal rested on the Revenue’s acceptance of the Tribunal’s decision in National Health and Education Society, which had been followed in the Petitioner’s case. This order arose from the earlier proceedings under section 10(22A) of the Act, rather than from the approval applications forming the subject of the present petitions.
- (u) In the first Writ Petition No. 2462 of 2010, this Court granted ad-interim reliefs in terms of prayer clause (d) on 17th January 2011. On 13th June 2011, the Court issued *Rule* and continued that relief until disposal of the said petition. Prayer clause (d) sought protection against implementation of the order dated 15th April 2010 and taxation of the Petitioner’s surplus,

together with completion of assessments and other proceedings, on the basis that its applications under section 10(23C)(via) stood approved.

- (v) On 22nd September 2011, while the first petition was pending, the Petitioner submitted a further application under section 10(23C)(via) for Assessment Year 2011-12 and subsequent years. Respondent No. 1 issued a questionnaire dated 6th September 2012 to which the Petitioner responded by letters dated 18th September 2012 and 24th September 2012, furnishing details concerning its financial position, capital expenditure, treatment of poor and indigent patients, compliance with the charitable hospitals scheme, and arrangements for the use of consultation rooms by doctors in the Out-Patient Department (**“OPD”**).
- (w) By an order dated 28th September 2012 (**“second impugned order”**), Respondent No. 1 rejected the said further application. Besides relying on the Petitioner’s surpluses and the expenditure on poor patients, the order questioned the allotment of consultation rooms to doctors, the absence of control over their professional fees, and the collection and payment of those fees through the Hospital. Respondent No. 1 concluded that the Petitioner did not satisfy the requirements of section 10(23C)(via).
- (x) On 23rd November 2012, the Supreme Court dismissed the Revenue’s Special Leave Petition (Civil) No. 4940 of 2012 against this Court’s order dated 6th December 2010 in the earlier proceedings under section

10(22A). The Supreme Court noted that the decision in National Health and Education Society, followed by the Tribunal in the Petitioner's case, had attained finality.

(y) The Petitioner thereafter challenged the order dated 28th September 2012 by the second petition, dated 14th May 2013, namely, Writ Petition No. 1051 of 2013. It sought the quashing of that order, directions for approval for Assessment Year 2011-12 and subsequent years, and interim protection against implementation of the rejection order.

(z) On 25th April 2014, this Court also issued *Rule* in the second Writ Petition No. 1051 of 2013 and granted interim relief in terms of prayer clause (d). Noting that *Rule* and interim relief had already been granted in the first Writ Petition No. 2462 of 2010, the Court directed that the two petitions be heard together. Prayer clause (d) in the later petition sought to restrain the Respondents from giving effect to the order dated 28th September 2012 or bringing the Petitioner's surplus to tax.

II. OPENING SUBMISSIONS OF THE PETITIONER

6. Mr. Jehangir D. Mistri, learned Senior Advocate who appears on behalf of the Petitioner, submits that both the impugned orders proceed on an erroneous understanding of section 10(23C)(via) of the Act and of the Petitioner's activities. He submits that the requirements that a hospital exist solely for

philanthropic purposes and that it not exist for purposes of profit are distinct. He points out that section 10(23C)(via) prescribes neither a ceiling on annual receipts nor a particular method of fixing hospital charges or doctors' fees. He submits that charging for medical services, even where a surplus results, does not, by itself, defeat the exemption. He submits that the said provision also recognises business incidental to the attainment of the institution's objects, subject to the maintenance of separate books. He contends that conditions not found in the statute cannot be introduced through the approval process.

7. Mr. Mistri submits that the Petitioner was incorporated for the purpose of creating and maintaining a hospital for philanthropic purposes and not for the purposes of profit. He draws our attention to its Memorandum and Articles of Association and submits that the income and property of the Petitioner are required to be applied solely towards the promotion of its objects and that no part thereof can be paid or transferred, directly or indirectly, to its members by way of dividend, bonus or otherwise. He further points out that, even upon dissolution, the remaining property of the Petitioner is required to be applied for charitable purposes. He submits that there is no material on record to show that any surplus generated by the Petitioner has ever been distributed or diverted to its Trustees or Members. He points out that in the impugned order, Respondent No. 1 has also accepted this position but has erred in treating the same merely as one amongst several factors, rather than giving due weight to the ultimate destination and application of the income of the Petitioner.

8. Mr. Mistri points out that the Petitioner's eligibility under the erstwhile section 10(22A) of the Act, which employed the same material language, had been accepted in the earlier assessment proceedings. He adds that the Revenue did not pursue a challenge to the finding that the Hospital existed for philanthropic purposes; the subsequent litigation concerned only the exemption of interest income. He relies upon the decisions of this Court and the Hon'ble Supreme Court in the Petitioner's own case, by referring to National Health and Education Society. He also relies upon the decisions in *Berger Paints India Ltd. v. CIT* [266 ITR 99]; *Union of India v. Kaumudini Narayan Dalal* [249 ITR 219]; *CIT v. Narendra Doshi* [254 ITR 606] and *CIT v. Shivsagar Estate* [257 ITR 59], to support his submission that the Revenue must adopt a consistent approach in materially similar cases.
9. Mr. Mistri submits that the CBDT granted approval for Assessment Years 1999-2000 to 2001-02 after examining substantially the same objections concerning surpluses and expenditure on poor patients. He argues that Respondent No. 1 could not depart from that approval without identifying a material change in facts or law. In support, he relies upon *Radhasoami Satsang v. CIT* [193 ITR 321] and *Pr. CIT v. Quest Investment Advisors Pvt. Ltd.* [409 ITR 545]. He also relies on the acceptance of the charitable character of the Petitioner in the assessments granting exemption under section 11 of the Act. He also points out that the Petitioner was registered under Section 12A and held approval under Section 80G, both of which continued to recognise its charitable character. According to

him, though such registration and approval may not, by themselves, determine entitlement under Section 10(23C)(via), they form part of the consistent statutory treatment accorded to the Petitioner by the Revenue.

10. Mr. Mistri disputes the finding of recurring surpluses recorded by Respondent No. 1 in the first impugned order. He relies on the statements that were tendered by him during arguments which tabulate the Petitioner's assessment-year-wise figures. According to him, for the period 2002-03 to 2010-11, after excluding treasury income and investment profits transferred to general reserve and accounting for depreciation and capital expenditure, there is a cumulative deficit of Rs. 76,67,76,616. He points out that even without excluding the investment-related amounts, the deficit is Rs. 21,87,28,218. He points out that interest and investment profits must be excluded when determining whether the Hospital's core medical activities generate a surplus.
11. Mr. Mistri further submits that no amount was transferred to the General Reserve before Assessment Year 2004-05 and that a deficit nevertheless arose for the earlier period after capital expenditure was taken into account. He therefore argues that the reserve transfers cannot account for the entire deficit disclosed in the Petitioner's computation.
12. In response to the computation done by the Revenue, Mr. Mistri submits that the deduction of capital expenditure and allowance of depreciation do not constitute

an impermissible double deduction. In support, he relies upon the decisions in ***DIT (E) v. Framjee Cawasjee Institute* [109 CTR 463]**; ***CIT v. Institute of Banking Personnel Selection* [131 Taxman 386]** and ***CIT v. Rajasthan and Gujarati Charitable Foundation, Poona* [402 ITR 441]** which allow depreciation when computing a charitable institution's income on commercial principles, notwithstanding the treatment of the asset's acquisition cost as application of income. He also relies on the Tribunal's order dated 11th October 2019 in the Petitioner's own case for Assessment Year 2012-13.

13. He also invites our attention to the decision of this Court in ***Tolani Education Society v. DDIT (E)* [351 ITR 184]** which requires consideration of necessary capital expenditure when examining the alleged surplus. Alternatively, he submits that even if a surplus arises, its generation must be distinguished from an institution's existence for profit. In the instant case, he points out that the Petitioner's objects are confined to establishing and maintaining the Hospital, its income cannot be distributed to members, and its residual property on dissolution must be applied for charitable purposes. In fact, he also points out that Respondent No. 1 has himself recorded a finding that no profits were distributed to its members and the surplus, if any, is applied towards medical equipment, infrastructure and the Hospital's continued operation. He, accordingly, submits that what is material is the destination and application of the surplus, and not its mere existence.

14. He also relies on this Court's observations in the earlier order dated 24th August 2009 concerning receipts from medical examinations of persons applying for visas to the United States of America. He submits that the Hospital must be considered as one composite unit, in which a surplus from one medical service may support treatment and medical care in another. He argues that receipts from an individual service cannot therefore be isolated from the Hospital's overall activities to infer a separate profit-making purpose.
15. Mr. Mistri then argues that an incidental surplus applied to the institution's objects does not establish a profit purpose and in support, relies upon the decisions in *Queen's Educational Society v. CIT* [372 ITR 699]; *Additional CIT v. Surat Art Silk Cloth Manufacturers Association* [121 ITR 1]; *Aditanar Educational Institution v. Additional CIT* [224 ITR 310] and *American Hotel and Lodging Association Educational Institute v. CBDT* [301 ITR 86]. He also relies upon the decisions in *Visvesvaraya Technological University v. ACIT*, [(2016) 68 taxmann.com 287]; *CCIT v. St. Peter's Educational Society* [(2016) 70 taxmann.com 171]; *Vanita Vishram Trust v. CCIT* [327 ITR 121] and *Tolani* (*supra*). In addition to these authorities, he also relies upon the CBDT's clarification concerning surplus under section 10(22A) and Circular No.14/2015 dated 17th August 2015 concerning educational institutions. He therefore submits that the reliance on the Uttarakhand High Court's decision in *CIT v. Queen's Educational Society* [(2009) 177 Taxman 326] in the impugned order is unsustainable.

16. Mr. Mistri then invites our attention to the decision in ***New Noble Educational Society v. CCIT*** [448 ITR 594] and submits that the same does not disturb the principle concerning incidental surpluses. He points out that its departure from the earlier decisions concerns the meaning of “*solely*” and the impermissibility of unrelated objects. He relies, particularly, on paragraphs 60 and 71 to 73 concerning “*incidental profits*” and paragraph 78 which provides for “*prospective operation*” and submits that the Petitioner has no unrelated objects and that the said decision also recognises “*qualifying incidental business activities*”.
17. He also invites our attention to the decision in ***Union of India v. Baba Banda Singh Bahadur Education Trust*** [454 ITR 273] and seeks to distinguish it on the ground that it concerned exceptionally high surpluses and factual findings which the said institution could not controvert. On the contrary, in the present case, he submits that the Petitioner disputes the very existence of a surplus and maintains that the correct computation, instead, produces a deficit.
18. Mr. Mistri also points out that the term, “*philanthropic purposes*” used in the said section is wider than the term, “*charity*” in its technical sense and it encompasses the promotion of human welfare generally. In this regard, he places reliance on the dictionary meanings of the said terms and on ***Re: Macduff; Macduff v. Macduff*** [(1896) 2 Ch 451], particularly the observations where the term, ‘*philanthropic purpose*’ is understood to mean a purpose which indicates

goodwill to mankind in general. Relying on this interpretation, he therefore submits that operating the Hospital can be philanthropic even without treatment being confined only to poor patients or supplied exclusively free of charge. He points out that Respondent No. 1 has read the reference to donations in the Webster's Dictionary in isolation and thereby unduly narrowed the expression.

19. Mr. Mistri then relies upon the decision in ***CIT v. Pulikkal Medical Foundation Pvt. Ltd.*** [210 ITR 299] and submits that '*philanthropy*' includes providing specialised treatment, acquiring modern equipment and engaging suitably remunerated doctors and technicians. He submits that those professionals need not themselves work gratuitously or from philanthropic motives. In the same context, he relies upon the decision in ***Shushrusha Citizens Co-operative Hospital Ltd. v. CCIT***, [(2018) 91 taxmann.com 136]. He argues that Respondent No. 1 could not disregard the decision in ***Pulikkal Medical Foundation*** (*supra*) merely because it was an older decision of another High Court.

20. Mr. Mistri submits that the Petitioner has furnished reports to the Charity Commissioner concerning treatment of indigent patients and weaker sections, without any adverse finding on its compliance in all these years. He submits that supervision of compliance with the scheme under section 41AA of the Maharashtra Public Trusts Act, 1950 lies with that authority. He relies upon the decision of this Court in ***CIT (E) v. Lata Mangeshkar Medical Foundation*** [464

ITR 702] and contends that medical relief to any class of persons, whether rich or poor, is charitable. Mr. Mistri also points out that the Revenue's Special Leave Petition challenging the said decision was dismissed by the Hon'ble Supreme Court. He also relies upon the decision in *CIT (E) v. Sir Kikabhai Premchand Settlement Trust No. XI* [Order dated 25th November 2025 passed in Income Tax Appeal No. 2328 of 2018] to support his submission that it is for the Charity Commissioner to determine compliance with the scheme.

21. Mr. Mistri further submits that the Hospital maintains resident doctors and other medical personnel and that patients remain free to consult doctors of their choice. He disputes the inference that paying patients are compelled to negotiate fees with consultants. He explains that the portion of professional fees retained by the Hospital is towards the infrastructure, facilities and services supplied by it, and does not establish an independent profit-making object. He further submits that concessional treatment of employees and executives does not negate philanthropy. He relies on this Court's order dated 24th August 2009 and points out that such expenditure was not met from the Indigent Patients Fund. He also submits that the independent fees charged by consultant doctors cannot determine the Hospital's character. Engaging specialists is necessary to provide appropriate medical services, and their professional terms do not, by themselves, establish a profit motive on the Petitioner's part.

22. Lastly, Mr. Mistri submits that the impugned orders suffer from non-application of mind and breach of the principles of natural justice. He contends that the objections concerning the alleged double deduction of depreciation and capital expenditure, and the adverse inferences drawn from the consultants' fee arrangements, were not specifically put to the Petitioner before the orders were passed.
23. Addressing the second petition, Mr. Mistri submits that consultation rooms are allotted to doctors to enable them to examine and treat patients for a fixed period of time, and that the Petitioner recovers only nominal charges towards the maintenance and upkeep of those rooms. He further submits that the Petitioner merely collects the doctors' professional fees on their behalf and holds those amounts in a fiduciary capacity pending remittance. According to him, neither the provision of consultation rooms nor this arrangement for collecting fees supports the conclusion that the Hospital exists for the benefit of doctors. He submits that all his other arguments in the first petition apply equally to the second petition.
24. Mr. Mistri also relies on the statement containing a separate computation for Assessment Year 2011-12 that was tendered by him during arguments. For that year, after deducting depreciation and capital expenditure, but retaining treasury income and investment profits, it shows a surplus of Rs. 3,45,87,549. However,

by relying on the submissions made in the first petition, he submits that a surplus does not, by itself, establish that the Hospital exists for profit.

25. Mr. Mistri further places on record the subsequent developments that have taken place during the pendency of the second petition. He points out that pursuant to the amendments introduced by the Finance Act, 2020, the Petitioner could no longer simultaneously avail the benefits under the two operative exemption regimes, namely, the Section 10(23C) regime and the Sections 11 to 13 regime. He submits that due to various reasons, the Petitioner elected to be governed by the Sections 11 to 13 regime and pursuant thereto, on 3rd August 2021, the Petitioner made an application under Section 12A(1)(ac) of the Act, which came to be allowed on 23rd September 2021, thereby granting the Petitioner, registration under Section 12AB of the Act with effect from Assessment Years 2022-23 to 2026-27. He therefore submits that, having regard to the aforesaid events, the relief sought in the second petition is required to be granted for Assessment Years 2011-12 to 2021-22.
26. On all these grounds, Mr. Mistri seeks the quashing of both impugned orders and directions granting approval for the respective assessment periods in terms of prayer clauses (a) and (b) of the two petitions.

III. SUBMISSIONS OF THE REVENUE

27. *Per contra*, Mr. Suresh Kumar, learned advocate for the Revenue, supports both the impugned orders and reiterates the findings recorded therein. He submits that the Petitioner's activities, considered as a whole, do not satisfy the requirement of "*existing solely for philanthropic purposes and not for purposes of profit*", as mandated under section 10(23C)(via) of the Act.
28. Mr. Suresh Kumar submits that the Petitioner has consistently generated substantial surpluses over the years, which cannot be characterised as merely incidental to its hospital activities. He disputes the Petitioner's computation of a cumulative deficit, particularly the exclusion of investment income and the deduction of both capital expenditure and depreciation. According to him, the application of surplus towards the acquisition of assets does not, by itself, establish a philanthropic purpose, since those assets enable the Hospital to generate further income. He further contends that the prohibition against distribution of profits is not, by itself, sufficient to establish eligibility for approval.
29. He further submits that the expenditure on free or concessional treatment of poor and needy patients constitutes only a small proportion of the Petitioner's total expenditure. He points out that the expenditure relied upon by the Petitioner also includes concessions extended to its own staff. He contends that these figures do

not substantiate the Petitioner's claim that it exists solely for philanthropic purposes. He clarifies that the Revenue does not contend that concessional treatment of an employee can never be philanthropic. Instead, its objection is to treating all employee concessions as philanthropic expenditure without examining the circumstances of the beneficiaries and the nature of the concession. He also relies on the Petitioner's statement that approximately 20% of its beds are utilized for poor and indigent patients. According to him, the use of the larger part of the Hospital's capacity by paying patients must be considered together with its rate structure, recurring surpluses and consultants' fees and the earmarking of beds, by itself, does not establish philanthropic existence.

- 30.** Mr. Suresh Kumar refers to the arrangements in the OPD of the Petitioner and submits that the Petitioner makes consultation rooms available to doctors for fixed charges but exercises no control over the professional fees they recover from patients. The doctors are free to charge fees without any ceiling prescribed by the Petitioner. According to him, this arrangement provides a platform for doctors to conduct their professional activities on commercial terms and supports the conclusion reached by Respondent No. 1. He further relies on the Petitioner's receipt of a share of the consultants' fees. He clarifies that the Revenue's objection is not that the Petitioner should charge consultants more, but that its participation in those receipts, coupled with the absence of control over professional charges, is relevant when considered with the other features of its operations.

31. He adds that the exemptions and approvals granted for earlier assessment years do not dispense with an examination of the Petitioner's activities during the periods under consideration. He contends that the generation and application of surplus must be examined for the relevant years and that the acceptance of a claim under section 11 of the Act does not, by itself, establish compliance with the distinct requirements of section 10(23C)(via).
32. Mr. Suresh Kumar disputes any breach of natural justice or failure to comply with the order of remand. He submits that the Petitioner was afforded personal hearings and permitted to furnish written submissions and financial material, all of which were considered. According to him, the earlier order required reconsideration and did not hold that approval must be granted. Respondent No. 1 therefore remained entitled to reach an adverse conclusion upon examining the material. He submits that a disagreement with the Petitioner's accounting treatment or legal submissions does not, by itself, establish denial of an opportunity of hearing. He further submits that compliance with the charitable-hospitals scheme and the requirements administered by the Charity Commissioner is relevant but not conclusive. He argues that neither such compliance nor registration under section 12A nor approval under section 80G, dispenses with the independent inquiry required under section 10(23C)(via).
33. As regards the subsequent developments that are stated to have taken place during the pendency of the two petitions, Mr. Suresh Kumar does not dispute the

factual submissions made by Mr. Mistri on the steps taken by the Petitioner, as set out in the additional affidavit dated 7th October 2026 filed by the Petitioner.

34. In support, Mr. Suresh Kumar relies upon the decision of this Court in *Yash Society v. CCIT* [375 ITR 152] to contend that substantial accumulated surpluses and their utilisation for acquiring further assets must be considered when determining whether an institution exists for purposes of profit. He submits that the Petitioner's reliance on the reinvestment of its surpluses does not answer the findings in the impugned orders.

35. Mr. Suresh Kumar also relies upon the decision in *Ashwini Sahakari Rugnalaya and Research Centre v. CCIT* [438 ITR 192] and argues that merely running a hospital cannot be a philanthropic activity without there being any additional benefit to the citizens in the form of concessional or free treatment to the weaker sections of society.

36. The Revenue, accordingly, seeks dismissal of both petitions.

IV. REJOINDER SUBMISSIONS OF THE PETITIONER

37. In rejoinder, Mr. Mistri seeks to distinguish the authorities relied upon by the Revenue. He invites our attention to *Ashwini Sahakari Rugnalaya* (*supra*), which involved benefits to member-doctors through payments unrelated to services rendered. He points out that no comparable direct or indirect distribution

to members has been found in the present case and therefore, the same is inapplicable.

38. He also seeks to distinguish *Yash Society (supra)* on the ground that it involved accumulated surpluses and the acquisition of land without a specified purpose. He emphasises that the decision itself distinguished this Court's judgment in the Petitioner's earlier proceedings.

V. **REASONS, ANALYSIS AND FINDINGS**

39. We have considered the detailed oral arguments advanced by Mr. Mistri, learned Senior Advocate on behalf of the Hospital and Mr. Suresh Kumar, learned Advocate on behalf of the Revenue. We have also carefully perused the record that is available before us including the written submissions filed by the Petitioner.

(a) *Surplus or Deficit ?*

40. We start by examining the finding of substantial and recurring surplus in the first impugned order. An excess of receipts over revenue expenditure does not, by itself, present the Hospital's complete financial position. Capital expenditure on medical equipment and hospital facilities must also be considered, although it is ordinarily reflected in the balance sheet rather than charged in full to the income and expenditure account. Whether the Hospital exists for profit must therefore

be assessed by considering its actual activities and the use of its funds, including such capital expenditure.

41. The Petitioner has explained that its receipts were used to acquire and replace medical equipment, improve operation theatres and maintain and modernise the Hospital. The Revenue, on the other hand, is unable to identify any particular item of that expenditure as fictitious, diverted to a private person or unrelated to the Hospital. Its objection is principally that capital expenditure cannot be considered once depreciation has been allowed, and that acquisition of assets increases the capacity to earn future receipts. These objections concern how the financial position and use of funds are assessed. They do not establish that the expenditure was incurred outside the Petitioner's objects.
42. In *Tolani Education Society (supra)*, this Court explains why reliance on the revenue account alone is inadequate. In that decision, the Court considered necessary additions to fixed assets and the institution's financial position over time. It held that modernisation in furtherance of the exempt activity cannot itself be treated as evidence against that activity. Applied to the present case, the equipment used for diagnosis and treatment remains an instrument of medical relief, even if improved facilities attract more patients and generate additional receipts. The relevant inquiry is to see the use of those receipts including acquiring assets for aiding better medical relief.

43. The double-deduction objection of the Revenue is also unsustainable under the law applicable to the years under examination. In *Framjee Cawasjee Institute (supra)*, this Court distinguished application of income towards acquisition of an asset from depreciation in computing the institution's income. It held that the former records the use of funds for its objects, whilst the latter recognises consumption of a depreciable asset in earning income. Applying this to the present case, it must be held that depreciation cannot be ignored under the then prevailing law.
44. That distinction was also followed in *Institute of Banking Personnel Selection (supra)*. It was also expressly approved by the Hon'ble Supreme Court in *Rajasthan and Gujarati Charitable Foundation (supra)* where normal depreciation was held to be allowable in determining a charitable institution's income on commercial principles, notwithstanding that the acquisition cost had been treated towards application of its income. Although those decisions concern section 11 of the Act, their reasoning answers the Revenue's objection that taking both matters into account is conceptually impermissible. The present exercise likewise concerns the real financial position of a charitable institution, and not two deductions claimed in computing the profits of an ordinary business.
45. Moreover, the Tribunal also applied this very distinction in the Petitioner's own appeal for Assessment Year 2012-13, which was decided on 11th October 2019 in ITA No. 3698/Mum/2018 when it allowed normal depreciation in computing

the Trust's income on commercial principles, following the decisions in *Institute of Banking Personnel Selection* (*supra*), *Framjee Cawasjee Institute* (*supra*) and *Rajasthan and Gujarati Charitable Foundation* (*supra*). It also recognised that the later restriction in section 11(6) was prospective. Although that order does not decide the approval applications before us, its reasoning negates the contention of the Revenue that recognition of capital application necessarily precludes depreciation under the law, then applicable. Accordingly, we are of the view that Respondent No. 1 could not have rejected capital application merely by labelling it an impermissible double deduction.

46. During the course of arguments, Mr. Mistri has handed over the Petitioner's assessment-year-wise statement which includes the figures for Assessment Years 2002-03 to 2010-11, the period covered by the first petition. He submits that the figures mentioned in this statement were also provided to Respondent No. 1 and in fact, most of the said figures are also reproduced in the impugned order. For convenience and ready reference, the relevant portion from the said table is reproduced below:

Assessment year	Surplus / (Deficit) for the year as per the Income and Expenditure Account	Treasury Income	Transfer to General Reserve	Surplus / (Deficit) for the year after Treasury Income and General Reserve	Depreciation	Surplus / (Deficit) for the year after Treasury Income, General Reserve and Depreciation	Capital Expenditure	Surplus / (Deficit) for the year after Treasury Income, General Reserve, Depreciation and capital expenditure		Surplus/(Deficit) after depreciation and capital expenditure (incl Treasury Income and Transfer General to reserve)	CCIT's contention [Reg. cap exp.]
	(A)	(B)	(C)	(D) = (A) - (B) - (C)	(E)	(F) = (D) - (E)	(G)	(H) = (F) - (G)		(I) = (A) - (E) - (G)	(J) = (A) - (G)
								For the year	Cumulative		
2002-03	5,76,47,403	1,86,83,389	-	3,89,64,014	4,42,01,239	(52,37,225)	4,93,19,304	(5,45,56,529)	(5,45,56,529)	(3,58,73,140)	83,28,099
2003-04	12,17,29,354	97,23,700	-	11,20,05,654	5,14,48,596	6,05,57,058	6,87,84,494	(82,27,436)	(6,27,83,965)	14,96,264	5,29,44,860
2004-05	21,27,02,992	1,42,45,369	8,94,59,816	10,89,97,807	4,79,82,465	6,10,15,342	3,11,84,462	2,98,30,880	(3,29,53,085)	13,35,36,065	18,15,18,530
2005-06	15,84,93,498	3,76,95,196	1,16,09,082	10,91,89,220	5,44,00,046	5,47,89,174	8,01,49,991	(2,53,60,817)	(5,83,13,902)	2,39,43,461	7,83,43,507
2006-07	17,43,59,920	4,80,26,107	94,83,352	11,68,50,461	4,92,19,818	6,76,30,643	16,44,10,361	(9,67,79,718)	(15,50,93,620)	(3,92,70,259)	99,49,559
2007-08	14,48,12,690	6,58,89,641	4,25,726	7,84,97,323	6,51,29,935	1,33,67,388	12,20,68,947	(10,87,01,559)	(26,37,95,179)	(4,23,86,192)	2,27,43,743
2008-09	13,00,66,992	7,02,02,924	11,78,934	5,86,85,134	6,48,13,816	(61,28,682)	6,95,63,680	(7,56,92,362)	(33,94,87,541)	(43,10,504)	6,05,03,312
2009-10	15,12,59,028	8,14,68,133	11,64,797	6,86,26,098	10,24,26,579	(3,38,00,481)	18,55,76,526	(21,93,77,007)	(55,88,64,548)	(13,67,44,077)	(3,43,17,498)
2010-11	12,44,97,968	8,83,59,961	4,32,271	3,57,05,736	10,92,97,157	(7,35,91,421)	13,43,20,647	(20,79,12,068)	(76,67,76,616)	(11,91,19,836)	(98,22,679)
Total	1,27,55,69,845	43,42,94,420	11,37,53,978	72,75,21,447	58,89,19,651	13,86,01,796	90,53,78,412	(76,67,76,616)		(21,87,28,218)	37,01,91,433

47. The Petitioner's statement separately identifies the starting surplus in column - A, depreciation in column - E and capital expenditure in column - G. On that presentation, the comparison in column - I deducts depreciation once in computing income and then, recognises the separate capital application. The two adjustments perform different functions. Column - I retains treasury income and the investment profits represented by transfers to General Reserve whilst column - H excludes those items.

48. The aggregate starting surplus in column - A is Rs. 1,27,55,69,845. Depreciation of Rs. 58,89,19,651 and capital expenditure of Rs. 90,53,78,412 produce a cumulative deficit of Rs. 21,87,28,218 in column - I. Column - H goes further by excluding treasury (interest) income of Rs. 43,42,94,420 and the investment profits transferred to general reserve of Rs. 11,37,53,978 resulting in a greater deficit of Rs. 76,67,76,616. By contrast, the method adopted by Respondent No. 1 deducts only capital expenditure but gives no effect to the other heads, namely, depreciation, treasury income and investment profits, producing an apparent surplus of Rs. 37,01,91,433.
49. Mr. Mistri has argued that for the purposes of determining whether the Petitioner has generated surplus, only amounts arising from its core activity of operating a hospital are required to be considered and as a result, the other ancillary income [treasury (interest) income and investment profits transferred to general reserve] is to be excluded. Insofar as the first petition is concerned, as already held above, since we are of the view that Respondent No. 1 was not entitled to reject capital application as an impermissible deduction, depreciation is required to be deducted whilst determining whether the Petitioner has generated any surplus. In the present case, this results in an aggregate deficit at the end of Assessment Year 2010-11 and therefore provides a sufficient basis for deciding the financial objection in the first petition, without going into the Petitioner's said contention.

50. Considering the above, we are of the view that, for Assessment Years 2002-03 to 2010-11 taken together, there is no adjusted surplus of the kind, as alleged by the Revenue. Instead, at the very least, there is an aggregate deficit of Rs. 21,87,28,218 at the end of Assessment Year 2010-11. Hence, the finding of Respondent No.1 in the first impugned order that the Hospital generates systematic profits is incorrect and cannot be sustained.

(b) Generation of surplus v/s Existing for profit

51. There is also an independent reason why the impugned orders cannot be sustained. Even where an annual surplus remains, its source and use must be considered. Here, the expenditure is on the Hospital and its medical facilities. Respondent No. 1 treats the prospect of increased receipts from improved facilities as proof of a profit purpose. That approach would penalise a philanthropic hospital for improving its equipment or expanding its capacity. The relevant question is whether the expenditure serves its philanthropic purpose or an unrelated commercial activity.
52. The Petitioner's Memorandum of Association is relevant to that question. Clause 3(I)(a) confines the principal undertaking to the Hospital and medical care. Clause 4 requires its income and property to be applied to its objects and prohibits distribution, directly or indirectly, of profits to members by dividend, bonus or otherwise. Clause 8 requires the property remaining on dissolution, after discharge of liabilities, to be devoted to charitable purposes for the people

of India. Thus, it is clear that the funds are dedicated to public purposes during the Petitioner's existence and cannot be released to its members, even upon dissolution. These provisions are reinforced by the actual application to the Hospital shown in the record. Respondent No. 1 has acknowledged the absence of material showing distribution of profits to the members. No finding in either impugned order identifies an appropriation of surplus by the management, a dividend to members, or a payment to a doctor constituting a disguised share of profits unrelated to services. The stated position that members of the Managing Committee receive no remuneration or honorarium also stands unrefuted. These facts support the Petitioner's claim that its funds serve its medical objects rather than private profit.

53. Legitimate salaries and professional fees are necessary expenses of running a hospital and must be distinguished from a distribution of profits. In ***Pulikkal Medical Foundation*** (*supra*), the Kerala High Court considered a similar prohibition on dividends, actual use of income for the hospital and the dedication of assets on dissolution to support its conclusion that the hospital, in that case, was not conducted for private profit.
54. In the present case, the Hospital's objects, its actual activities and the use of its funds establish that it exists solely for philanthropic purposes and not for profit. Its income is applied to medical care and the improvement of hospital facilities, and its assets remain dedicated to charitable purposes even upon dissolution.

There is no finding in the impugned orders that its funds have been diverted for private benefit or used for an unrelated commercial activity. In fact, even before us, no such contention is raised by the Revenue. We therefore hold that any surplus remaining in a particular year does not, on these facts, disqualify the Petitioner from approval under section 10(23C)(via) of the Act. This provides an independent ground for rejecting Respondent No. 1's finding that the Hospital exists for profit.

55. Advances in medical science and technology require hospitals to improve their infrastructure and facilities. Effective medical care may call for new technology, modern equipment and the replacement of outdated machinery. Section 10(23C)(via) of the Act does not require a hospital to keep its infrastructure unchanged to retain its exemption. The acquisition of advanced equipment or improvement of facilities does not, by itself, establish a profit-making purpose. Also, where such expenditure serves the hospital's medical and philanthropic purposes, the prospect of increased receipts from those facilities cannot, by itself, justify refusal of approval.

56. The judicial precedents relied upon by the Petitioner also support the above findings. In the decisions of the Hon'ble Supreme Court in *Aditanar (supra)*, *American Hotel (supra)*, *Queen's Educational Society (supra)* and *St. Peter's Educational Society (supra)* also recognise that a surplus does not, by itself, establish that an institution exists for profit. This Court, in *Vanita Vishram Trust*

(*supra*) and ***Tolani*** (*supra*) further considers whether the funds are used to improve the institution's facilities. We rely on these decisions to distinguish an incidental surplus from a profit-making purpose. The Uttarakhand High Court's decision in ***CIT v. Queen's Educational Society*** [177 Taxman 326], relied upon by Respondent No.1, was reversed by the Hon'ble Supreme Court in ***Queen's Educational Society*** (*supra*). Its reasoning cannot therefore sustain the impugned order.

57. In the decision of the Hon'ble Supreme Court in ***Visvesvaraya Technological University*** (*supra*) is particularly instructive on the distinction. Despite substantial accumulated surpluses in that case, the Hon'ble Supreme Court held that the requirement of '*existing solely for education and not for profit*' was satisfied because the funds were ploughed back into the educational infrastructure.
58. The Petitioner's reliance on the decision of the Hon'ble Supreme Court in ***Surat Art Silk*** (*supra*) is also instructive. In that case, the majority was construing the then definition of "*charitable purpose*" in section 2(15) of the Act, particularly its general-public-utility limb. Its predominant-object formulation cannot replace the word "*solely*" that is contained in section 10(23C)(via). Nevertheless, its explanation of why a surplus is not automatically disqualifying remains instructive. At paragraph 17, the Court observed, "*...It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the*

expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation but would also reflect unsound principle of management...” This reasoning supports the view that a surplus does not, by itself, establish a profit-making purpose. Its size, the activities from which it arises and the purposes for which it is used must also be considered.

59. The Board’s earlier clarification, F. No. 194/16-17-II(A-I), relied upon by the Petitioner, dealt with the former sections 10(22) and 10(22A) of the Act. Paragraph 4 expressly extended its explanation to hospitals:

“What has been stated in respect of educational institutions will equally apply to hospitals and other institutions referred to in section 10(22A). In the case of hospitals and similar institutions, if the surplus is used for philanthropic purposes, the income of the institution will be eligible for exemption under section 10(22A).”

The clarification recognises that a surplus can coexist with a philanthropic purpose.

60. Additionally, Circular No. 14/2015 dated 17th August 2015 addresses the approval regime itself. Paragraph 3 states:

“Hence, it is clarified that mere generation of surplus by educational institution from year to year cannot be a basis for rejection of application u/s 10(23C)(vi) if it is used for educational purposes unless the accumulation is contrary to the manner prescribed under law.”

The Circular expressly states that “*Similar principles would also apply to cases covered u/s 10(23C)(via) of the Act.*” Although issued after the impugned orders, it supports our distinction between generating a surplus and existing for profit.

61. We next consider the Revenue’s objections to the arrangements in the Petitioner’s OPD. The Hospital provides consultation rooms where patients can consult specialists in different disciplines. The Petitioner explains that the charges for these rooms meet their maintenance expenses and that the consultants also treat indigent patients without charging professional fees. The Petitioner also stresses that these facilities form part of the Hospital’s arrangements for examination, diagnosis and treatment. The impugned orders do not establish that this arrangement constitutes a separate business of letting property.
62. The Hospital also collects fees on behalf of the consultants, retains ten per cent towards its facilities and services, and remits the balance to them. The retained amount forms part of the Hospital’s receipts. Payment of the balance to the consultants for their services cannot, merely because it is collected through the Hospital, be treated as a distribution of the Hospital’s profits. The impugned orders do not identify any payment unrelated to services rendered or any diversion of the Hospital’s funds for private benefit. Hence, on this material, we are of the view that the absence of a ceiling on consultants’ fees does not establish the Revenue’s contention that the Petitioner exists for profit.

63. In *Shushrusha Citizens Co-operative Hospital (supra)*, this Court remitted the matter because further examination was needed of the concessional treatment provided to non-member patients and the consultants' fee arrangements. In that case, those questions remained unanswered despite the hospital's medical objects, reinvestment of its surplus in hospital facilities and non-payment of dividends.
64. In the present case, the Petitioner had furnished details of free and concessional treatment for financial years 2007-08 to 2011-12 with its responses dated 18th September 2012 and 24th September 2012, together with material showing compliance with the scheme. It also explained the consultants' treatment of indigent patients without professional charges and the Hospital's retention of ten per cent of the fees towards its facilities and services. The Revenue has pointed to no discrepancy in this material. In this background, these arrangements support the Hospital's provision of medical care and do not establish that it exists for the private benefit of its consultants or for profit. The Revenue's objections on this ground are therefore rejected.

(c) Philanthropic purpose

65. The Revenue also emphasises the small percentage of receipts spent by the Petitioner on poor and needy patients. However, at the outset, it is important to note that whilst it may be relevant to consider the extent and genuineness of free or concessional treatment, section 10(23C)(via) does not prescribe any minimum

ratio of such expenditure to gross receipts, as the test of philanthropic existence. Moreover, a comparison of one category of concessions with the Hospital's total receipts leaves out expenditure on the facilities, personnel and services through which medical relief is provided to the public. The percentage spent on free or concessional treatment cannot, by itself, determine whether the Hospital satisfies the statutory requirements. In fact, this argument wrongly assumes that treating paying patients cannot be philanthropic.

66. In the present case, the Petitioner's claim is supported by more than a general declaration of benevolence. It is subject to the charitable hospitals scheme approved by this Court on 17th August 2006 under section 41AA of the Bombay Public Trusts Act, 1950. The scheme requires reservation of ten per cent of operational beds for indigent patients receiving free treatment and a further ten per cent for patients from weaker sections receiving concessional treatment. It also requires an Indigent Patients Fund, a contribution of two per cent of gross billing as prescribed by the scheme, specified services without charge and periodic reporting to the Charity Commissioner. Those are substantial and enforceable obligations directed specifically to access to medical care.
67. The Petitioner has placed its compliance reports and the Charity Commissioner's report confirming compliance before the authorities. No adverse determination by the Charity Commissioner concerning the compliance relied upon has been shown. Hence, as rightly argued by Mr. Mistri, the earmarking of beds, the

provision of treatment and the statutory supervision lend tangible support to the Petitioner's philanthropic character. They cannot be discarded merely because the value of concessions expressed as a percentage of total receipts appears small. Nor can contribution to the Indigent Patients Fund and expenditure from it be treated as identical measures without considering the scheme's accounting and utilisation requirements. Similarly, the reservation for indigent patients and the separate reservation for weaker-section patients should not be treated as proof that every patient in the remaining beds falls outside a philanthropic activity. The availability of treatment to paying patients helps sustain the same medical facilities. The Petitioner also continues to hold registration under Section 12A and approval under Section 80G of the Act. Hence, we are of the view that the Hospital's philanthropic character is supported by its service to the public and compliance with the scheme, and not merely by the percentage of reserved beds.

68. In *Visvesvaraya Technological University (supra)*, the Hon'ble Supreme Court also attached significance to the University's recognition under section 80G of the Act, observing: "...*The exemption granted in respect of the University under section 80G of the Act, qua the donations made to it also cannot be ignored in view of an in-built recognition in such exemption with regard to the charitable nature of the institution, i.e., the appellant University.*". A similar consideration arises here. The Hospital complies with the scheme approved by this Court under section 41AA of the Maharashtra Public Trusts Act, 1950 and administered by the Charity Commissioner. The scheme requires free treatment for indigent

patients and concessional treatment for patients from weaker sections. The Hospital's compliance with these obligations, confirmed by the Charity Commissioner's report, gives practical effect to its charitable character. This statutory recognition, supported by the treatment actually provided, cannot be ignored when assessing its philanthropic purpose. Although it does not by itself establish entitlement to approval under section 10(23C)(via), it reinforces our finding that the Hospital serves that purpose.

69. The decision in *Sir Kikabhai Premchand Settlement Trust No. XI (supra)* concerned the alleged shortfall in the contribution to the Indigent Patients Fund arising from the treatment of doctors' fees in gross billing. After a detailed examination, this Court endorsed the findings rejecting the alleged breach where no adverse view had been taken by the Charity Commissioner, the competent authority under the scheme. The decision therefore also supports the Petitioner's submission that its philanthropic character cannot be rejected on the basis of an alleged breach of the scheme that has not been established.
70. In *Lata Mangeshkar Medical Foundation (supra)*, this Court declined to interfere with the Tribunal's order on the ground of consistency. The Tribunal's order in *ACIT (Exemptions) v. Lata Mangeshkar Medical Foundation [ITA No. 712/PUN/2015, decided on 23rd June 2017]* which was upheld by this Court, followed the earlier decision recognising that medical relief need not be confined to the poor, and considered capital expenditure and compliance with

the Indigent Patients Fund requirements. Although those decisions concerned section 11 of the Act, they support the Petitioner's submission that providing treatment to paying patients does not, by itself, negate the Hospital's charitable character.

71. Similarly, the inclusion of staff among recipients of concessional treatment does not justify a different conclusion. This Court's earlier judgment expressly rejected the assumption that such treatment can never be philanthropic. Employees are not excluded from the public merely by reason of their employment. Instead, their circumstances and the nature of the concession matter. Equally, a contractual benefit to an affluent executive cannot automatically be counted as relief to an indigent patient. In the present case, the Petitioner has clarified that staff treatment was not charged to the Indigent Patients Fund. No contrary diversion from that fund has been established by the Revenue. Therefore, we are of the view that its general objection to staff concessions neither proves breach of the scheme nor negates the Hospital's overall philanthropic purpose.

(d) Section 10(23C)(via)

72. Having examined the financial position and the Hospital's activities, we now turn to the requirements of section 10(23C)(via) of the Act, as it stood during the relevant period. For the sake of convenience, the relevant provision is again reproduced hereunder:

“10. Incomes not included in total income - In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included -

...

...

(23C) any income received by any person on behalf of -

...

...

(via) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (iiia) or sub-clause (iiiae) and which may be approved by the prescribed authority.”

The provision requires both, an exclusively philanthropic purpose and the absence of a profit purpose. The fact that an establishment provides medical services is necessary, but does not by itself prove its entitlement.

73. The same material expression occurred in the former section 10(22A) of the Act which provided thus:

“10. Incomes not included in total income - In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included -

...

(22A) any income of a hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit;

... ”

Its replacement by the approval regime, with effect from 1st April 1999, did not convert philanthropy into a requirement that every service be rendered gratuitously. Instead, it introduced scrutiny by the prescribed authority and the

statutory conditions governing application, accumulation and investment of income.

74. The second proviso to section 10(23C) of the Act authorised examination of documents, including audited accounts, and inquiries into the genuineness of activities. It provided that “...*the prescribed authority, before approving any fund or trust or institution or any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the prescribed authority may also make such inquiries as it deems necessary in this behalf.*”
75. The Act does not define the term “*philanthropic purposes*”. However, section 2(15) defines “*charitable purpose*” inclusively and the words “*relief of the poor, education, medical relief*” identify separate heads. They do not confine medical relief only to the poor. Section 9(1) of the Maharashtra Public Trusts Act, 1950, formerly the Bombay Public Trusts Act, similarly lists “*relief of poverty or distress*”, “*education*” and “*medical relief*” separately. These definition

provisions supply relevant context, although neither purports to define the expression “*philanthropic purposes*” used in section 10(23C)(via).

76. In ***Pulikkal Medical Foundation*** (*supra*), the Kerala High Court explained that philanthropy serves the public at large and is not confined to free treatment of the poor. Referring to ***Macduff*** (*supra*), it recognised that philanthropy is wider than charity in the technical English-law sense. The Court stated that “...However, free treatment to the poor and needy cannot be the sole philanthropic activity of a hospital...” Providing specialist treatment, modern equipment and skilled staff may also serve a philanthropic purpose. Section 2(15) of the Act similarly recognises medical relief as a charitable purpose distinct from relief of the poor. Respondent No. 1 therefore erred in treating philanthropy as confined to donations or free treatment, and in discounting the said decision merely because of its age. Thus, charging patients does not, by itself, deprive a hospital of its philanthropic character. The hospital must nevertheless exist solely for philanthropic purposes and not for profit. In the present case, the Hospital’s activities, its compliance with the scheme and the application of its funds, discussed above, establish that it satisfies these requirements.

77. In ***Breach Candy Hospital Trust v. Chief Commissioner of Income-tax*** [2010] 322 ITR 246 (Bom), namely, the judgment dated 24th August 2009 in the Petitioner’s earlier proceedings, this Court held that philanthropy is not confined

to free treatment of the extremely poor. It was held that concessional treatment of persons unable to afford the full charges can also be philanthropic. The Court further required consideration of the Hospital as a whole, including the possibility that receipts from one medical service support expenditure on another. Those directions governed the reconsideration after remand. They could not be displaced by repeating the assumption that only treatment given without charge constitutes philanthropy.

78. The words '*not for purposes of profit*' that are contained in sub-clause (via) of section 10(23C) require an examination of the purpose and actual conduct of the institution. They do not require its receipts and expenditure to balance exactly at the end of every financial year. The section itself contemplates income being applied or accumulated for the institution's objects, subject to the statutory safeguards. A surplus can nevertheless be evidence of a profit purpose, particularly where the pattern of receipts, charges, expenditure and deployment supports that inference. Its existence is relevant, but not conclusive.
79. The distinction between making a surplus and existing for profit is explained in *Aditanar* (*supra*) and in some of the other decisions concerning educational institutions cited by Mr. Mistri. Those decisions assist the Petitioner because the statutory provisions use comparable language.

80. In *New Noble (supra)*, the Hon'ble Supreme Court rejected the interpretation of 'solely' as merely predominant and overruled the earlier approach in *American Hotel (supra)* and *Queen's Educational Society (supra)* to that extent. It also confirmed the authority's power to examine accounts and actual activities at the approval stage. At the same time, the said decision also recognises that incidental surpluses do not, by themselves, warrant rejection. In paragraph 76(b), it is held that:

"Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval under section 10(23C) of the Income-tax Act. At the same time, where surplus accrues in a given year or set of years per se, it is not a bar, provided such surplus is generated in the course of providing education or educational activities."

The said decision also explains that the corresponding statutory conditions extend to hospitals and medical institutions, and that any incidental business must be connected with the qualifying activity. In the present case, clause 3(I)(a) of the Petitioner's Memorandum of Association directs the creation and maintenance of a hospital for philanthropic purposes and not for profit, for persons of any community. Its supporting powers must be read in aid of that object. No independent commercial undertaking or unrelated substantive object is identified by Respondent No. 1 in the impugned orders. The actual activities relied upon by the Revenue concern the Hospital's medical services, its equipment, its consultants and the management of its funds. The OPD consultation rooms serve diagnosis and treatment, unlike the letting of premises

for unrelated activities discussed in *New Noble (supra)*. Since the Petitioner satisfies the requirement of an exclusively philanthropic purpose, it is unnecessary to decide its further argument concerning the prospective operation of that decision.

81. In *Yash Society (supra)*, this Court's conclusion rested on the combined circumstances of substantial undisputed surpluses, increased assets and bank balances, the acquisition of land, and deficiencies in the claim concerning concessional treatment. Moreover, the contemporaneous resolution did not specify the purpose of the land purchase. The resolution thus failed to establish the claimed charitable purpose of the acquisition. In the present case, the expenditure is identified with the existing Hospital, its equipment and medical facilities. Respondent No. 1 has not identified any unrelated use. More fundamentally, the aggregate surplus alleged for the first petition's period results from the erroneous computation, as discussed above. Moreover, *Yash Society (supra)* itself distinguished the Petitioner's earlier case. The said decision neither excludes an incidental reasonable surplus nor makes every acquisition of assets evidence of profiteering. Its conclusion on that record does not establish a profit purpose on the materially different evidence before us. Hence, the ratio of the said decision would not apply to the case before us.

82. In the decision of the Hon'ble Supreme Court, in *Baba Banda Singh Bahadur Education Trust (supra)* there was a finding of systematic profits of 67.81 per

cent before depreciation and 44.48 per cent after depreciation. The High Court did not overturn that finding but granted relief on the basis that the Trust's predominant object was charitable. Applying *New Noble (supra)*, the Hon'ble Supreme Court restored the refusal of approval. The present case is however, different. For the reasons already given, Respondent No. 1's computation of surplus is incorrect, as highlighted by the verified statement and the applicable principles concerning depreciation and capital expenditure. Further, the Hospital's objects and actual activities establish that it exists solely for philanthropic purposes and not for profit. Hence, the said decision is of no assistance to the Revenue.

83. In *Ashwini Sahakari Rugnalaya and Research Centre (supra)*, the Hon'ble Supreme Court turned decisively on an admitted distribution of a share of inpatient collections to member-doctors, including those who had performed no corresponding work. The Hon'ble Supreme Court regarded that arrangement as sufficient to sustain the refusal. As to the separate ground that the rates were comparable to those of commercial hospitals, the Court indicated that remand might otherwise have been appropriate because the underlying data had not been supplied. It did not hold that rates or concessions were irrelevant. Here, in the present case, there is no comparable finding of payments unrelated to services.
84. The Petitioner also relies on its earlier exemptions, the CBDT's approval after examining similar objections, and the assessments granting relief under section

11. However, these do not create an automatic right to approval under section 10(23C)(via). The Petitioner must satisfy the applicable statutory conditions for each assessment year. Nevertheless, *Radhasoami Satsang (supra)* and *Quest Investment Advisors (supra)* require consistency where the material facts and law remain unchanged. In the decisions of Hon'ble Supreme Court in *Berger Paints (supra)*, *Kaumudini Narayan Dalal (supra)*, *Narendra Doshi (supra)* and *Shivsagar Estate (supra)* likewise support the Petitioner's objection to inconsistent treatment without just cause. This principle also explains the earlier orders in the Petitioner's case concerning the accepted decision in *National Health and Education Society (supra)*. In the present case, therefore, the earlier acceptance of the Hospital's character is relevant and calls for a reasoned explanation from Respondent No.1 for any departure. Neither impugned order identifies a material diversion from the Hospital's objects or private appropriation that would overcome the evidence supporting its continued philanthropic character. Moreover, as already noted above, there is none provided in the impugned orders. This, also supports our findings on merits.

85. Considering the discussion and resultant findings above, we do not consider it necessary to decide the Petitioner's further contention that it was not given an adequate opportunity to meet the adverse grounds.

86. For Assessment Year 2011-12 which is subject matter of the second petition, the Petitioner's statement reveals a surplus of Rs. 3,45,87,549 (if only depreciation

of Rs. 9,47,25,045 and capital expenditure of Rs. 6,09,54,763 are deducted from the starting surplus of Rs. 19,02,67,357). On the other hand, it results in a deficit of Rs. 5,56,66,802 (if treasury income of Rs. 8,98,73,366 and investment profits of Rs. 3,80,985 are also deducted). On the other hand, the method adopted by Respondent No. 1 (which only deducts capital expenditure) results in a surplus of Rs. 12,93,12,594. The relevant portion of the said statement is reproduced hereunder:

Assessment year	Surplus / (Deficit) for the year as per the Income and Expenditure Account	Treasury Income	Transfer to General Reserve	Surplus / (Deficit) for the year after Treasury Income and General Reserve	Depreciation	Surplus / (Deficit) for the year after Treasury Income, General Reserve and Depreciation	Capital Expenditure	Surplus / (Deficit) for the year after Treasury Income, General Reserve, Depreciation and capital expenditure	Surplus/(Deficit) after depreciation and capital expenditure (incl Treasury Income and Transfer General to reserve)	CCIT's contention [Reg. cap exp.]
	(A)	(B)	(C)	(D) = (A) - (B) - (C)	(E)	(F) = (D) - (E)	(G)	(H) = (F) - (G)	(I) = (A) - (E) - (G)	(J) = (A) - (G)
2011-12	19,02,67,357	8,98,73,366	3,80,985	10,00,13,006	9,47,25,045	52,87,961	6,09,54,763	(5,56,66,802)	3,45,87,549	12,93,12,594

87. For the above reasons and without going into the Petitioner's submission that for determining whether it has generated surplus, only amounts arising from its core activity of operating a hospital are required to be considered, we are of the view that surplus does not, by itself, establish that the Hospital existed for profit. As already discussed above, in the present case, the objects of the Petitioner, its actual activities and use of funds during this period clearly establish that it existed solely for philanthropic purposes and not for profit. The second impugned order therefore cannot be sustained.

88. Considering the contents of the additional affidavit dated 7th October 2026 filed by the Petitioner setting out the events that have transpired during the pendency of the two petitions, although the Petitioner's application dated 22nd September 2011 had sought approval for Assessment Year 2011-12 and subsequent years, the relief in the second petition can now only be granted for Assessment Years 2011-12 to 2021-22.

VI. OPERATIVE ORDER

89. For all the above reasons, *Rule* is made absolute in both petitions, which are accordingly allowed in terms of the following order:

- (a) The order dated 15th April 2010 passed by Respondent No. 1, impugned in Writ Petition No. 2462 of 2010, rejecting the Petitioner's application for approval under section 10(23C)(via) of the Act for Assessment Years 2002-03 to 2010-11 is hereby quashed and set aside.
- (b) Respondent No. 1, or the authority presently competent to grant such approval, shall issue the requisite order granting approval under Section 10(23C)(via) of the Income-tax Act, 1961 for Assessment Years 2002-03 to 2010-11 to the Petitioner pursuant to the applications forming the subject matter of the first petition, consistent with the findings recorded in this judgment. This order shall be issued within eight weeks from the

date on which a copy of this judgment is uploaded on the website of the High Court.

- (c) The order dated 28th September 2012 passed by Respondent No. 1, impugned in Writ Petition No. 1051 of 2013, rejecting the Petitioner's application for approval under section 10(23C)(via) of the Act for Assessment Year 2011-12 and subsequent years, is also hereby quashed and set aside.
- (d) Respondent No. 1, or the authority presently competent to grant such approval, shall issue the requisite order granting approval under Section 10(23C)(via) of the Income-tax Act, 1961 pursuant to the Petitioner's application dated 22nd September 2011 forming the subject matter of the second petition, consistent with the findings recorded in this judgment. It is clarified that though the Petitioner's said application had sought approval for Assessment Year 2011-12 and subsequent years, the requisite order granting such approval shall restrict itself to Assessment Years 2011-12 to 2021-22 only. This order shall also be issued within eight weeks from the date on which a copy of this judgment is uploaded on the website of the High Court.
- (e) There shall be no order as to costs.

(f) Though we have disposed of the two petitions, we place them on board for reporting compliance on 14th December 2026.

90. This order shall be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned parties shall act upon such digitally signed copy of this order downloaded from the official website of the Bombay High Court.

(FARHAN P. DUBASH, J.)

(B. P. COLABAWALLA, J.)

Shubham Gadhavepatil

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Digitally signed
by SHUBHAM
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Date:
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