

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE 'A' BENCH, BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

**ITA No.735(BNG)/2014
(Assessment year : 2008-09)**

The Deputy Director of Income-tax (Exempts.)
Circle-17(2)
Bangalore

Appellant

Vs

Maria Seva Sangha,
No.6, 1st Floor, Rose Lane,
Richmond Road,
Bangalore

Respondent

**Revenue by : Smt Neera Malhotra, CIT
Assessee by : Shri Suresh Muthukrishnan, CA**

**Date of hearing : 03-12-2015
Date of pronouncement : 11-12-2015**

ORDER

PER SHRI INTURI RAMA RAO, AM :

This appeal by the revenue is directed against the order of the CIT(A),
Mysore dated 03-12-2013 for the assessment year 2008-09.

2. The revenue raised the following grounds of appeal;

“1. Whether the CIT(A) is right in directing the AO to allow accumulation u/s 11(2) as revised in view of the addition made by the AO, even though the assessee has not furnished any revised form No.10 seeking such revised accumulation u/s 11(2) incorporating the details of actual amount of income being accumulated, purpose for which it is accumulated etc. which

are crucial for the purpose of assessee's claim of further accumulation and also not obtaining the approval of the DIT(E) condoning the delay in furnishing revised form 10 as per the requirements in terms of Board's Circular No.273 dated 3.6.1980.

2. Whether the CIT(A)s is correct in law in holding that the carry forward benefit shall be allowed to the assessee, even when the regular provisions of computation of income as contemplated u/s 14 and specific provisions of sec.15 to 59 are pressed into action in the case of charitable or religious trust/institution.

3. Whether the CIT(A) is correct in law in holding that the carry forward benefit shall be allowed to the assessee , when there is no scope for computing loss from property held under the trust wholly for charitable and religious purposes, as per provisions of sec.11,12 & 13, enabling the set off and carry forward and set off against the income of subsequent years as envisaged u/s 70 to 79".

2.1 Brief facts of the case are that the assessee is a trust filed its return of income for the assessment year 2008-09 on 16-09-2008 disclosing the total income of Rs.NIL and claimed a carry forward excess application of income of Rs.33,90,176/-. The assessment was completed by the ADIT, Bangalore u/s 143(3) vide order dated 29-12-2010 at a total income of Rs.2,32,85,208/-. Subsequently, an application was moved by the assessee trust and the

assessment order was rectified under the provisions of Sec.154 of the IT Act vide order dated 19-01-2012 at a total income of Rs.84,57,671/-. While doing so, the AO allowed the accumulation only to the extent of Rs.7,30,00,000/- as per the claim made in the return of income, without considering the addition made in the assessment for the purpose of accumulation of income under the provisions of sec.11(2) of the IT Act,1961. However, the same was found to be rectified vide rectification proceedings u/s 154 of the IT Act, 1961 and the claim for set off of the deficit of Rs.3,56,06,553/- incurred during the previous year relevant to assessment year 2007-08 was not allowed set off against the income of the current year.

3. Being aggrieved an appeal was filed before the learned CIT(A) who allowed the grounds of appeal vide para-7.2 of his order;

“ I find that this is a covered issue in various decisions. In the case of Seva Sadan Orphanage and Training Institute, CIT(A)V, analyzing various cases also allowed this issue. In view of the same, the AO is directed to allow the carry forward benefit claimed”.

4. Being aggrieved the revenue is in appeal before us.

5. We have heard the rival submissions and perused the material on record. We find from the record that for the assessment year 2007-08 this Tribunal in ITA No.320(B)/2015 vide order dated 16-10-2015 had allowed the carry forward of Rs.3,56,06,553/- excess application of income for charitable purpose for future years. Therefore, this amount has to be set off against the income of the current year and we do not find any illegality in the order passed by the learned CIT(A) hence, the appeal of the revenue is dismissed.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on the 11th December, 2015.

Sd/-
(VIJAYPAL RAO)
JUDICIAL MEMBER

Place: Bangalore

D a t e d : 11-12-2015

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-
(INTURI RAMARAO)
ACCOUNTANT MEMBER

By order, AR,ITAT, Bangalore