

IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'C', BENGALURU

BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER

AND

SHRI. LALIT KUMAR, JUDICIAL MEMBER

I.T.A No.1074/Bang/2016
(Assessment Year : 2011-12)

Deputy Commissioner of Income-tax (E),
Circle -1, Bengaluru

.. Appellant

v.

M/s. Peoples Education Society,
50 Feet Road, Hanumanthanagar,
BSK 1st Stage, Bengaluru 560 050
PAN : AAATP3955H

.. Respondent

Assessee by : Shri. Prashanth, C, CA
Revenue by : Shri. Sanjay Kumar, CIT-III

Heard on : 31.05.2017
Pronounced on : 09.06.2017

ORDER

PER LALIT KUMAR, JUDICIAL MEMBER :

The present appeal is filed by the Revenue against the CIT (A)-14,
LTU, Bengaluru, dt.22.03.2016, for the assessment year 2011-12.

02. Facts of the case are that the assessee is a society registered under the Mysore Society Registration Act. The society has been granted approval u/s.12AA and Section 10(23C)(vi) of Income-tax Act, 1961. The income of the Society is derived from running and managing various educational institutions imparting education in the field of medicine, engineering, management, graduation and under graduation etc. The respondent has claimed depreciation of Rs.18,90,94,568 on fixed assets as application of income under section 11 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') while filing returns for Assessment Year 2011-12.

03. The first issue raised in the present appeal by the revenue is with respect of disallowance of depreciation as application of income, which are covered in grounds (i) to (iv) of the grounds of Revenue, which are descriptive in nature and hence not reproduced.

04. It is the contention of the Ld. DR that while computing the income u/s.11 and 12 of the Act, assessee had claimed depreciation to the tune of Rs.18,90,94,568/- on the assets, when the investment made thereof had already been claimed as application of income during the year of

investment. It was submitted that the assessee is not liable to claim depreciation on the same as it would amount to double deduction. The Ld. DR submitted that the order of the Hon'ble jurisdictional High Court in ITA No.62/2010 (67 taxmann.com 160), dt.22.02.2016, is clearly distinguishable.

05. The Ld. AR has submitted as follows :

Section 11 of the Act clearly states that:

"11 (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income '.

As per Section 11(1), income derived from property held under trust, wholly for charitable or religious purpose, will be exempt to the extent it is applied or accumulated for application towards objects of the Trust in India, provided the amount of application is not less than 85% of the income from such property. Thus, it is evident that the term used therein is "income" and not "total income", which is applicable for the purposes of taxation of other taxable entities under the Act.

b) Further, distinguishing the terms 'total income' and 'income' for the purpose of Sec 11, the Central Board of Direct Taxes vide Circular No5-1)I[LXX-6) of 198, dated 19.6.1968, has stated that

"...

2. The reference in clause (a) of Section 21(1) is invariably to "income" and not to "total income". The expression "total income" has been specifically

*defined in section 2(45) as "the total amount of income computed in the manner laid down in this Act". It would, accordingly, be incorrect to assign to the word "income" used in section 11 (1)(a), the same meaning as has been specifically assigned to the expression "total income" vide section 2(45).
....."*

Hence the computation mechanism contained in section 11 is with reference to 'Income' rather than 'Total Income'. Further section 11 provides exemption to a charitable entity on the condition that 85% of its income is applied towards charitable purpose.

c) It has been held by various High Courts that the income of the charitable organization are to be computed on commercial principles, without reference to the heads of income specified under section 14 of the Income Tax Act, 1961. The same should be computed as per the book income and not total income as specified by section 2(45). This proposition is laid down by various judgements of Hon'ble High Courts, namely, (i) CIT v Trustee of H.E.H. Nizam's Supplemental Religious Endowment Trust 127 ITR 378 (AP); (ii) CIT v Rao Bahadur Calavala Cunnan Chetty Charities 135 ITR 485 (Mad.) & (iii) CIT v Estate of V.L.Ethiraj 136 ITR 12 (Mad.).

d) The Hon⁷ble Karnataka High Court in the case of CIT Vs. Society of the Sisters of St. Anne (146 ITR 28), held that the income

"19. The depreciation if it is not allowed as a necessary deduction for computing the income from the charitable institutions, then there is no way to preserve the corpus of the trust for deriving the income. The Board also appears to have understood the 'income' u/s. 11(1) in its commercial sense. The

relevant portion of the Circular No. 5-P (LXX-6) of 1968, dated July 19, 1968, reads :

“Where the trust derives income from house property, interest on securities, capital gains, or other sources, the word 'income' should be understood in its commercial sense, i.e., book income, after adding back any appropriations or applications thereof towards the purpose of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted, in this connection, that the amounts so added back will become chargeable to tax u/s. 11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amounts spent or applied for the purposes of the trust from out of the income computed in the aforesaid manner, should be not less than 75 per cent. of the latter, if the trust is to get the full benefit of the exemption u/s. 11(1).”

Hence the jurisdictional High Court has upheld the claim of depreciation as application of income under section ii while computing the Income of a Charitable entity.

e) The allowance of depreciation as application of income for the computation of application under section 11 in the case of a charitable institution has been upheld by the Hon'ble High court of Bombay in the case of CIT v Institute of Banking 264 ITR 110.

f) A similar view in the matter was taken by the Hon'ble ITAT, Bangalore, in the case of Karnataka Reddy Janasangha in ITA No. 220/Bang/201 1, Karnataka State Muslim Federation in ITA No. 37/Bang/2013, in the case of DDIT (E) V.s Cutchi Memon Union (2013) 60 SOT 260, Jyothi Charitable

Trust in 60 taxmann.com. 165 Bangalore and ACIT Vs. City Hospital Charitable Trust in 42 ITR(Trib) 583 Bangalore.

06. We have gone through the record and heard the rival contentions. In our view, the issue is squarely covered by the Judgment of the Hon'ble Karnataka High Court in Director of Income-tax, Exemptions v. Al- Ameen Charitable Fund Trust ITA No.62/2010 (67 taxmann.com 160) . Therefore, we dismiss this ground of the Revenue appeal .

Net receipts v. Gross receipts

07. The next issue is with respect of net receipts v. gross receipts in computation of application of income. Under this head also the Revenue has raised grounds (i) to (iv) which are again descriptive in nature and hence not reproduced.

08. On this issue, the Ld. DR has submitted that the AO has allowed accumulation of 15% of net receipt instead of 15% of the gross receipts. However, the CIT (A) has allowed the accumulation of 15% of gross receipts.

09. On the other hand, the Ld. AR has submitted that the issue is squarely covered by the order of the coordinate bench of the Bangalore Tribunal in the matter of Jyothi Charitable Trust in ITA No.662/Bang/2015

[60 taxmann.com. 165], wherein it was decided that the accumulation at 15% on gross receipts should be considered u/s.11(1)(a), and not on net receipts.

10. We have heard the rival submissions and considered the materials on record. In our view, the issue is squarely covered by the coordinate bench decision of the Tribunal in the matter of Jyothi Charitable Trust (supra). No distinguishable feature or facts was brought to our notice by the Ld. DR. In the light of the above, this ground of the Revenue is also dismissed.

UNUTILISED GRANTS AS INCOME

11. The third issue is on treatment of unutilised grants as income. Under this head also, the Revenue has raised grounds (i) to (iv) which are descriptive in nature and hence not reproduced.

12. The Ld. DR has submitted that the assessee has received grants from various universities and outside agencies towards education activity. However, in many cases, the assessee has not utilised the grants and are lying with the assessee, shown as liabilities in the Balance-Sheet. It was noticed during the scrutiny that the assessee has not maintained any separate bank account for the purpose of keeping the grants received from various universities and outside agencies and has wrongly merged the funds with

other revenue streams of the assessee and it was further contended that the grants received by the assessee were not utilised for the purpose it was intended for a long-time. In view of the above, it was submitted that the findings of the CIT (A) are also required to be specified. Our attention was also drawn to para 6.4 of the order of the CIT (A), wherein it is mentioned as under :

“6.4 As the AR has produced all records, accounts, bank statements and other related documents during the course of hearing and after due verification of them it is seen that they are specific grants to be utilised in a specific time frame and necessary accounting, auditing and verification is being undertaken as per the rules framed by the AICTE or funding agency and it is also seen that the assessee has opened separate bank a/c's for the same and is submitting utilisation certificate as required by the persons giving the grants.”

On the basis of the above, it was submitted that the CIT (A) has decided the issue without giving an opportunity to the AO by seeking a remand report in respect of the facts now brought to the notice of the CIT (A).

13. On the other hand, it was submitted by the Ld. AR that the grants which were received from AICTE, and other research agencies were utilised for the specific purpose / education activities and the assessee has maintained separate bank account for the said grants. It was submitted that

the assessee has not merged the accounts of the assessee. It was further submitted that the documents and the pass-book and the other financials were duly submitted with the AO during the assessment proceedings and no new documents were filed by the assessee before the CIT (A).

14. We have heard the rival submissions and perused the materials on record. In our view, the conclusion recorded by the CIT (A) in para 6.4 mentioned herein above do not clearly suggest that the inference was drawn by the CIT (A) based on the material already existing on record with the AO. In our view, it would always be advisable that the first appellate authority should seek a remand report, in case the factual matrix are not clear from the records, from the AO. In the light of the above, we remand the matter to the file of the CIT (A) with a direction to seek a remand report from the AO on this issue, i.e., whether the grants received from other agencies including AICTE, were utilised for the specific purposes or not and whether the assessee has kept the said grants received by it in a separate bank account and has not merged the same with the regular account of the assessee. In the light of the above, the issue is remanded back to the AO.

INVESTMENT IN FIXED ASSET BY USING THE LOAN AMOUNT

15. The next issue is with respect to investment in fixed asset by using the loan. Under this head also, the Revenue has raised grounds (i) to (v) which are descriptive in nature and hence not reproduced.

16. The Ld. DR has submitted that the assessee had availed a loan to the tune of Rs.28,59,60,638/- as on 31.03.2010 and the same was increased to Rs.47,14,68,794/- as on 31.03.2011. Thus it was submitted that there was an increase in the loan amount to the extent of Rs.18,55,08,156/- during the year under consideration. It was also submitted by the Ld. DR that the assessee for the purpose of availing the loan and actual utilisation of the same has submitted reply, wherein it was submitted that the loans were utilised for meeting the capital / revenue expenditure of the Society and its institution. It was also brought to the notice that the assessee during the year under consideration had also invested in two immovable properties during the financial year under consideration, which were purchased vide said deeds dt.18.03.2011 and 16.09.2010, for a sum of Rs.2,58,67,200/- and Rs.3,67,00,000/-. It was submitted by the Ld. DR that the reliance placed by the CIT (A) on the judgment of Hon'ble jurisdictional High Court in the matter of CIT v.

Janmabhoomi Press Trust [242 ITR 703] was wholly incorrect as the facts in the said case was different from the facts in the present case. It was submitted that in the cited case, it was an application of fund for the purposes of servicing the interest . It was submitted that the present case is not on application of income, but is a case of acquiring the assets from the loan amount. It was submitted that the assessee is only entitled to the benefit if there is a repayment of debt availed for the purposes of construction of building taken by the assessee for the purposes of augmenting its income. In those circumstances, it was held that it is an application of income for charitable purposes.

17. On the other hand, the Ld. AR has submitted as under :

4. Capital Expenditure out of Loan Funds:-

(a) With respect to the above ground, the respondent vide its submissions made to the Ld. Commissioner (Appeals) and to the Ld. Assessing Officer had explained that the assessee invests the surplus funds in Fixed Deposits and when funds are required, instead of pre-closing the Fixed Deposits, it avails loans against Fixed Deposits for the purpose of utilization towards revenue and capital expenditure.

(b) The loans availed are not specific borrowings for acquisition/ construction of any fixed assets and they are loan against fixed deposit, which are used for the general expenditure of the Society or for the Capital expenditure.

- (c) The respondent places reliance on the judgment of by the Hon'ble Karnataka High Court in the case of CIT Vs. Janmabhoomi Press Trust (242 ITR 703), where it was upheld that repayment of debt incurred by the assessee for the construction of the commercial building taken up by the assessee for the purpose of augmenting its funds, should be treated as 'application' of the income of the assessee-trust for charitable purposes.
- (d) In the present case, the respondent instead of pre-closing the available money in the form of fixed deposits and utilization of the same towards application for the purpose of the Society, has availed loan against such deposits and has utilized the same for the purpose of the objectives of the Society. The said facts were accepted by the Commissioner (Appeals) and accordingly allowed (para 7.4 of the order).

18. We have heard the rival submissions and perused the materials on record. In the present case, the sole basis of disallowing the amount of Rs.10,62,94,245/- is on account of the loans borrowed for the purpose of capital expenditure. It is thus clear that the total expenditure incurred by the assessee was Rs.47,87,64,431/-, for the charitable purposes / activities of the trust. It is also coming from the record that the assessee has applied the total amount of Rs.47,87,64,431/- for the trust purposes. The reasoning given by the AO is this that as the excess fund was already available with the assessee-trust which was lying in the form FDRs, that should have been applied instead of the loan amount. As per the assessee, funds even if borrowed funds were utilised for the objects of the trust and

therefore, it should be allowed. In our view, if this proposition of the assessee is accepted then it would amount to granting the benefit of double deduction. The income of the assessee is lying invested in FDR and it is not utilised for the objects of the trust or for repayment of loan earlier taken for objects of the trust.

The assessee is asking for accepting the usage of borrowed funds as application of income for the objects of the trust , therefore seeking exemption under section 11 of the Act , the same cannot be allowed as in future when the assessee start repaying the loan, at that time repayment of loan would be treated as application of income in that year of repayment , as the repayment of loan would be from the income of trust . Further, the Ld. DR during the course of argument has submitted that the judgment of Hon'ble jurisdictional High Court in Janmabhoomi Press Trust (supra) is not applicable as it is the case of application of repayment of loan.

19. In our view, Section 11 only contemplates the application of income and if the said income is applied for the aims and objectives of the trust, then the trust is entitled for exemption under the provision. The said analogy cannot be extended to acquisition of assets from the borrowed funds. If we hold so, then we would be equating the borrowed fund with

the income of the trust. Under the law, it is the application of income and not of the fund that is required to be seen for the purpose of granting the exemption. In fact, the assessee would be entitled to exemption in view of the judgment of Hon'ble jurisdictional High Court in the matter of Janmabhoomi Press Trust (supra), as and when the loan is repaid to the financial institutions. In view thereof, if the claim of the assessee that the borrowed funds were utilised for the objects of the trust, is entertained and accepted at this stage, it would tantamount to double benefit which cannot be the intention of the statute. In view thereof, we find that the CIT (A) erred in allowing the claim for acquisition of capital assets from the borrowed fund. Therefore, the order passed by the CIT (A) is required to be recalled and the ground of the Revenue is allowed to the extent of borrowed fund for an amount of Rs.10,62,94,245/-.

20. In the result, the appeal of the Revenue is partly allowed for statistical purpose.

Order pronounced in the open court on the 9th day of June, 2017.

Sd/-

(A. K. GARODIA)
ACCOUNTANT MEMBER

MCN*

Sd/-

(LALIT KUMAR)
JUDICIAL MEMBER

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar