

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' B '**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

I.T. A. No.1346/Bang/2015
(Assessment Year : 2008-09)

Dy. Commissioner of Income Tax (Exemptions),
Circle 1, Bangalore. Appellant.

Vs.

The Mysore Education Society,
15th Cross, Malleswaram, Bangalore. Respondent.
PAN AAATT 1677Q

Appellant By : Shri A R V Sreenivasan, JCIT (D.R)
Respondent By : None.

Date of Hearing : 19.09.2016.
Date of Pronouncement : 23.09.2016.

O R D E R

Per Shri Vijay Pal Rao, J.M. :

This appeal by the revenue is directed against the order dt.31.8.2015 of Commissioner of Income Tax (Appeals)-14, LTU, Bangalore for the Assessment Year 2008-09.

2. The revenue has raised the following grounds :

- i). The CIT(A) has erred in ignoring the fact that the assessee had failed to declare the specific purpose for which the income is being accumulated u/s 11(2) except stating that 'towards the objects of the trust'
- ii). The CIT(A) has failed to appreciate the fact that the assessee had failed to identify the amount meant for accumulation u/s 11(2) giving the particulars of mode of investment/ deposit of the same such as, amount of funds invested in fixed deposits with FD No., name and address of the bank & branch etc., and amount of income invested in other modes, such as; mutual funds, shares, bonds etc., and, therefore, the assessee has violated the conditions stipulated u/s 11(2) r.w.s. 11(5).
- iii) The CIT (A) has failed to consider the facts that majority of the decisions of other High Courts are in favour of the revenue including the decisions of Hon'ble High Court of Calcutta in the case of *DIT (E) vs. Trustees of Singhania Charitable Trust (199 ITR 819)* and Hon'ble High Court of Madras in the case of *CIT vs. Muttaiah Chettiar Family Trust (245 ITR 400)*.

3. None has appeared on behalf of the assessee-respondent when this appeal was called repeatedly for hearing. On the last date of hearing on 5.7.2016, the Authorised Representative of the assessee appeared before the Tribunal and filed its Power of Attorney on which the matter was adjourned to 19.09.2016. However despite having noted the date of

hearing, none has appeared on behalf of the assessee on 19.9.2016. Accordingly, we propose to hear and decide this appeal ex-parte.

4. We have heard the learned Departmental Representative and carefully perused the relevant material on record. The Id. DR has submitted that the assessee has accumulated surplus of Rs.50,66,365 over and above the permissible limit of 15% as per Section 11(1)(a) of the Income Tax Act, 1961 (in short 'the Act'). Though the assessee has filed Form No.10 in respect of accumulation of income however, the purpose of accumulation has not been specified by the assessee and only the general purpose being object of the society has been stated. Thus the Id. DR has submitted that the Assessing Officer has disallowed the exemption under Section 11 to the extent of the excess accumulation of income in view of the judgment of Hon'ble Kolkata High Court in the case of **Director of Income Tax (Exemption) Vs. Trustees of Singhania Charitable Trust** (1993) 199 ITR 819 (Cal). The Id. DR has further contended that even the Hon'ble Madras High Court in the case of **CIT Vs. Muttaiah** 245 ITR 400 (Mad.) has taken similar view. Thus the Id. DR

has submitted that the Assessing Officer is justified in rejecting the claim of exemption in respect of excess accumulation of income.

5. Having considered the submissions of the Id. DR as well as perusal of the impugned orders, we find that the assessee has filed Form No.10 in respect of the accumulation of income in which the purpose of accumulation was stated as under :

- i) To meet the capital/revenue expenditure relating to the maintenance and establishment of educational institutions.
- ii) Other objects of the Society.

5.1 The Assessing Officer has disallowed the claim of exemption under Section 11(2) of the Act on the ground that the assessee has not specified the purpose for accumulation of income as per section 11(2) of the Act and therefore the same was not permissible. On appeal, the CIT (Appeals) has allowed the claim of the assessee by following the decision of Hon'ble jurisdictional High Court in the case of **Director of Income Tax (Exemptions) Vs. Envisions** (2015) 232 taxman 164 (Kar.) in para 5.6 as under :

“5.6 I have carefully considered the facts of the case and the decision of the Hon'ble Karnataka High Court in the case of DIT (Exemptions) Vs. Envisions (supra). In the present case the purpose of accumulation stated by the appellant is found to be

for meeting the capital / revenue expenditure relating to the maintenance and establishment of educational institutions and for other objects of the society. The appellants have claimed that all the clauses mentioned in the Memorandum of Association of Society relate to only promotion and development of education and appellant – society is solely and exclusively engaged in the promotion of education and nothing else. The Assessing Officer has not contradicted these facts during the scrutiny proceedings. Therefore, the facts of the present case are found to be covered by the decision of the jurisdictional High Court in the case of DIT (Exemptions) Vs. Envisions (supra). Respectfully following this decision, I hold that the appellant trust is eligible for deduction of Rs.50,66,365 under Section 11(2) of the IT Act. The grounds of appeal related to this issue are accordingly allowed.”

We find that the Hon'ble Calcutta High Court in the case of **Director of Income Tax (Exemption) Vs. Trustees of Singhania Charitable Trust** (supra) has held that accumulation under Section 11(2) is permissible only for some specific purpose of contingency and not for general purpose of the Trust. However, Hon'ble jurisdictional High Court in the case of **Director of Income Tax (Exemptions) Vs. Envisions** (supra) after considering the decision of Hon'ble Calcutta High Court in the case of **Director of Income Tax (Exemption) Vs. Trustees of Singhania Charitable Trust** (supra) held in paras 7 to 10 as under :

“ 7. It is not disputed by the parties that the objects of the trust, as given in the trust deed, were 14 in number. The three purposes for which accumulation was prayed for and mentioned in Form -10 by the assessee were undisputedly covered by the objects of the trust. As such, it cannot be disputed that the purpose

mentioned by the assessee while claiming the benefit, was for achieving the objects of the trust.

8. The Calcutta High Court in the case of Singhania Charitable Trust (supra), was dealing with a case where in the declaration given by the assessee claiming benefit u/s 11 (2) of the Act, all the purpose mentioned were for achieving the charitable objects for which the assessee- trust was created. Though it was held the accumulation of income for more than one purpose was permissible, but the generality of the purpose for which the benefit was claimed u/s 11(2) of the Act was not found to be permissible as the purpose for which the trust required that accumulation of income was not specified and clearly mentioned. Hence the matter was remanded back to the Tribunal permitting the assessee to adduce fresh evidence.

9. The said judgment of the Calcutta High Court was considered by the Delhi High Court in the case of COMMISSIONER OF INCOME TAX vs HOTEL & RESTAURANT ASSOCIATION, (2003) 261 ITR 190 (Del). The Delhi High Court, while considering the case for grant of benefit u/s 11(2) of the Act, held that specification of certain purpose or purposes is needed for accumulation of income of the trust, and the same cannot be beyond the objects of the trust. It was further held that plurality of purpose for accumulation was not precluded and as long as the purpose was to achieve the objects of the trust, the assessee would be entitled to the benefit of Section 11(2) of the Act. In another case of DIRECTOR OF INCOME TAX vs MITUSI AND CO.ENVIRONMENTAL TRUST, (2008) 303 ITR 111 (Delhi), the Delhi High Court noted the judgment of the Calcutta High Court in the case of Singhania Charitable Trus (supra) and reiterated view taken in the case of Hotel and Restaurant Association (supra).

10. In the present case, we find that the revenue does not dispute the fact that all the three purposes specified by the Assessee in Form 10 are for achieving the objects of the trust, and that the purposes as well as objects, are both charitable. Merely because more than one purpose has been specified and details about the plan of such expenditure has not been given, the same would not, in our view, be sufficient to deny the benefit u/s 11(2) of the Act to the Assessee. As long as the objects of the trust are charitable in character and as long as the purpose or purposes mentioned in Form 10 are for achieving the objects of the trust, merely because of non-furnishing of the details, as how the said amount is proposed to be spent in future, the assessee cannot be denied the exemption as is admissible under sub-section 2 of Section 11 of the I.T.Act, 1961."

Since the CIT (Appeals) has allowed the claim of the assessee by

following the judgment of Hon'ble jurisdictional High Court in the case of

Director of Income Tax (Exemptions) Vs. Envisions (supra), which is

binding precedent therefore, we do not find any reason to interfere with the impugned order of the CIT (Appeals).

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

Order pronounced in the open court on the 23rd day of Sept.,2016.

Sd/-

(S. JAYARAMAN)

Accountant Member

Sd/-

(VIJAY PAL RAO)

Judicial Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

By Order

Asst. Registrar, ITAT, Bangalore