IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
and
SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER

ITA No.523/Bang/2014
(Assessment year: 2009-10)

Deputy Director of Income-tax (Exemptions)
Circle 17(1),
Bangalore. … Appellant

Vs.

Baldwin Methodist Educational Society,
No.13, Convent Road,
Museum Road Post,
Bangalore-25. … Respondent
PAN: AAAJB0668B

Appellant by: Smt.Chandana Ramachandran, CIT(DR).
Respondent by: Shri V.Srinivasan, CA.

Date of hearing : 10/03/2015.
Date of pronouncement: 31/03/2015.

O R D E R

Per Smt. P.MADHAVI DEVI, JM:

This is an appeal filed by the Revenue against the order of the order of the CIT(A), Mysore, dated 24/10/2013 directing the Assessing Officer (AO) to allow the claim of excess expenditure of earlier years to be carried forward and claimed against the current year income i.e. for the assessment year 2009-10.

2. Brief facts of the case are that the assessee, an AOP(Trust), filed its return of income for the assessment year 2009-10 on 31/3/2010 declaring 'nil income. The said return was processed u/s 143(1) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] on 8/3/2011 resulting in refund of Rs.5,78,420/-. Subsequently, during the assessment proceedings u/s 143(3), specific details were called for on various issues. The assessee's representative appeared and filed submissions, documents etc., On perusal of the details filed by the assessee, the AO observed that an amount of Rs.3,95,90,827/- was claimed to relate to academic year 2008-09 though this amount was received in the financial year 2007-08. The AO further observed that the assessee has claimed expenditure of earlier year as brought forward expenditure in the return of income amounting to Rs.6,63,12,628/- in the revised computation and claimed it as application of income during the current year. The AO, however, held that there is no express provision in the Act permitting adjustment of earlier year's brought forward expenditure as application of income during the current year. He held that the current year's expenditure only must be considered as application of income. He accordingly disallowed the claim of the assessee of treating earlier years brought forward expenditure as applied during the assessment year concerned and accordingly brought it to tax.

3. Aggrieved, the assessee preferred an appeal before the CIT(A) who, after considering various decisions in favour of the assessee as well as the revenue has followed the decision of the ITAT, Bangalore Bench in the case of *T.M.A.Pai Foundation* & others in ITA Nos.481 to 485/Bang/2009 dated 16/2/2010 for the assessment years 2002-03 to 2006-07 to hold the issues in favour of the assessee. Against the relief given by the CIT(A), the Revenue is in appeal before us.

4. Learned Departmental Representative, supported the order of the AO while the learned counsel for the assessee placed reliance upon the order of the CIT(A) as well as the decision of 'A' bench of this Tribunal in the case of *T.M.A.Pai Foundation and others* (cited supra). Copies of the said orders are also filed before us.

5. On a consideration of the rival contentions and the material on record and also the decision of the Tribunal, we find that the Tribunal has considered the issue at length and in para.13 of its order, it has held as under:

> *"13. Considering the rival submissions we are of the view that all the appeals preferred by the revenue is to be allowed. The assessee is relying on the decision of the Bombay High Court in the case of Institute of Banking (supra) whereas the revenue is relying on the decision of the Tribunal, Bombay Bench in VII ITO v. Trustees of Sathya Sai Trust in (1990) 33 ITD 320. In this case the Tribunal held the deficit arising as a result of excess spending for charitable purposes will not form part of the*

income and the same cannot be carried forward. With regard to the point whether excess spending will form or not form part of the total income and, therefore, it could be carried forward or not is decided by the Hon'ble Bombay High Court in the case Institute of Banking (supra) in assessee's favour. In that case, however, it was a regular assessment and not 154 order as in the instant case of the assessee. There was no specific claim as such by the assessee in the instant case. Therefore, the facts are distinguishable. "

We also find that 'A' bench of this Tribunal in the case of Academy of Liberal Education in ITA No.687/Bang/2014 dated 20/2/2015, to which one of us i.e. the Accountant Member is the signatory, has considered this issue and in para.8 of its order, held as under:

"8. We are of the view that pendency of an appeal before the Hon'ble High Court of Karnataka cannot be the basis not to follow the decision on the issue already rendered in identical cases. Section 11(1)(a) does not contain any words of limitation to the effect that the income should have been applied for charitable or religious purpose only in the year in which the income has arisen. The application for charitable purposes as contemplated in section 11(1)(a) takes place in the year in which the income is adjusted to meet the expenses incurred for charitable or religious purposes. Hence, even if the expenses for such purposes have been incurred in the earlier years and the said expenses are adjusted against the income of a subsequent year, the income of such subsequent year can be said to be applied for charitable or religious purposes in the year in which such adjustment takes place. In other words, the set-off of

excess of expenditure incurred over the income of earlier years against the income of a later year will amount to application of income of such later year. The above is the position of law as held in the case of CIT Vs. Maharana of Mewar Charitable Foundation *164 ITR 439 (Raj)* CIT Vs. Shri Plot Swetamber Murti Pujak Jain Mandal *211 ITR 293 (Guj.). In* CIT Vs. Institute of Banking Personnel Selection *264 ITR 110 (Bom), it was held that in case of charitable trust whose income is exempt under s. 11, excess of expenditure in the earlier years can be adjusted against income of subsequent years and such adjustment would be application of income for subsequent years and that depreciation is allowable on the assets the cost of which has been fully allowed as application of income under s. 11 in past years. In* Govindu Naicker Estate VS. ADIT *248 ITR 368 (Mad), the Hon'ble Madras High Court held that the income of the trust has to be arrived at having due regard to the commercial principles, that s. 11 is a benevolent provision, and that the expenditure incurred on religious or charitable purposes in earlier year or years can be adjusted against the income of the subsequent year. The principle that the loss incurred under one head can only be set off against the income from the same head is not of any relevance, if the expenditure incurred was for religious or charitable purposes, and the expenditure adjusted against the income of the trust in a subsequent year, would not amount to an incidence of loss of an earlier year being set off against the profit of a subsequent year. The object of the religious and charitable trust can only be achieved by incurring expenditure and in order to incur that expenditure, the trust should have an income. So long as the expenditure incurred is on religious or charitable purposes, it is the expenditure properly incurred by the trust, and the*

income from out of which that expenditure is incurred, would not be liable to tax. The expenditure, if incurred in an earlier year is adjusted against the income of a later year, it has to be held that the trust had incurred expenditure on religious and charitable purposes from the income of the subsequent year, even though the actual expenditure was in the earlier years, if in the books of account of the trust such earlier expenditure had been set off against the income of the subsequent year. The expenditure that can be so adjusted can only be expenditure on religious and charitable purposes and no other. The High Court relied on the decision in the case of CIT Vs. Society of Sisters of ST. Anne 146 ITR 28 (Kar)."

We find that the order of the CIT(A) is in consonance with the judicial precedents reproduced above. Therefore, we see no reason to interfere with the order of the CIT(A). The revenue's appeal is, accordingly, dismissed.

Pronounced in the open court on 31st March, 2015.

sd/-	sd/-
(Abraham P George)	**(Smt. P.Madhavi Devi)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

eksrinivasulu

Copy to:

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore