

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

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

ITA No.314/Bang/2015  
(Assessment year: 2007-08)

The Suvidya Educational & Service Society,  
PB No.22906 Suvidya College,  
Electronic City P.O,  
Bangalore-561229. ... Appellant  
*PAN: AAATT2407N*

Vs.

Asst. Director of Income-tax(Exemption),  
Circle 17(2),  
Bangalore. ... Respondent

Appellant by: Shri Suresh Muthukrishnan, CA.  
Respondent by: Dr. P.K.Srihari, Add.CIT (DR).

Date of hearing : 29/06/2015  
Date of pronouncement: 08/07/2015.

**O R D E R**

**Per Smt. P.MADHAVI DEVI, JM:**

This appeal by the assessee is against the order of the CIT(A), LTU, Bangalore, dated 20/10/2014 upholding the denial of carry forward of the excess application of income during the assessment year 2007-08 to be set off against the 'income from property' held under trust in the future.

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2. Brief facts of the case are that the assessee an educational and social services society and is registered as a charitable trust. It filed its return of income for the relevant assessment year declaring taxable income at 'nil'. During the assessment proceedings, the Assessing Officer (AO) observed that there is excess of application of income during the relevant financial year and the assessee is seeking carry forward of the deficit to future years. The AO disallowed the same.

3. Aggrieved, the assessee preferred an appeal before the CIT(A) who confirmed the order of the AO and the assessee is in second appeal before us.

4. The learned counsel for the assessee submitted that this issue is covered in favour of the assessee by various decisions of this Tribunal to which both of us are signatories and also by the decision of the Hon'ble Bombay High Court in the case of CIT vs. Institute of Banking. Copies of the said orders are filed before us.

The learned Departmental Representative, however, relied upon the orders of the authorities below.

5. Having regard to the rival contentions and the material on record, we find that similar issue had arisen before the Tribunal in the case of Baldwin Methodist Educational Society in ITA No.523/Bang/2014 for assessment year 2009-10 and 'C' bench of this Tribunal to which both of us are signatories, had

considered the issue at length and at para.5 of the order had held as under:

"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

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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".

6. Further, we also find that the Hon'ble Bombay High Court in the case of CIT vs. Institute of Banking (2003) 264 ITR 110 has held as under:

"Now coming to question No.3 the point which arises for consideration is whether excess of expenditure in the earlier years can be adjusted against the income of the subsequent year and whether such adjustment should be treated as application of income in the subsequent year

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for charitable purposes? It was argued on behalf of the Department that expenditure incurred in the earlier years cannot be met out of the income of the subsequent year and that utilisation of such income for meeting the expenditure of earlier years would not amount to application of income for charitable or religious purposes. In the present case, the Assessing Officer did not allow carry forward of the excess of expenditure to be set off against the surplus of the subsequent years on the ground that in the case of a charitable trust, their income was assessable under self-contained code mentioned in section 11 to section 13 of the Income-tax Act and that the income of the charitable trust was not assessable under the head 'Profits and gains of business' under section 28 in which the provision for carry forward of losses was relevant. That, in the case of a charitable trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of the subsequent years. We do not find any merit in this argument of the Department. Income derived from the trust property has also got to be computed on commercial principles and if commercial principles are applied then adjustment of expenses incurred by the trust for charitable and religious purposes in the earlier years against the income earned by the trust in the subsequent year will have to be regarded as application of income of the trust for charitable and religious purposes in the subsequent year in which adjustment has been made having regard to the benevolent provisions contained in section 11 of the Act and that such adjustment will have to be excluded from the income of the trust under section 11(1)(a) of the Act. Our view is also supported by the judgment of the Gujarat High Court in the case of CIT vs. Shri Plot Swetamber Murti Pujak Jain Mandal (1995) 211 ITR 293. Accordingly, we answer question No.3 in the affirmative, i.e. in favour of the assessee and against the Department."

Respectfully following the judgment of the Hon'ble Bombay High Court, we direct the AO to allow the assessee to carry forward the deficit of the income arising on account of excess application of

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income during the relevant financial year to the subsequent assessment years.

7. In the result, the assessee's appeal is accordingly allowed.

*Pronounced in the open court on 8<sup>th</sup> July, 2015.*

sd/-  
**(Abraham P George)**  
**ACCOUNTANT MEMBER**  
*eksrinivasulu*

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

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