

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

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

ITA No.2201/Bang/2016  
(Assessment year: 2012-13)

Income-tax Officer (Exemption),  
Ward-1,  
Bengaluru. ... Appellant

Vs.

Franciscan Service Society,  
Sarjapur Road,  
Koramangala, PO Box No.3417,  
Bengaluru-560034.  
*PAN: AAATF0201A* ... Respondent

Appellant by : Shri S.Nambirajan, Addl.CIT(DR)  
Respondent by : Shri Narendra Sharma, Advocate

Date of hearing : 26/09/2017  
Date of pronouncement : 27/09/2017

**O R D E R**

**Per INTURI RAMA RAO, AM:**

This is an appeal filed by the revenue directed against the order of the CIT(A)(LTU), Bengaluru, dated 22/09/2016 for the assessment year 2012-13.

2. The revenue raised the following grounds of appeal:

**1) Carry forward of excess application/deficit of current year for application in subsequent (future) year:**

a) The CIT (A) has erred in directing the assessing officer to allow set-off of excess expenditure/application pertaining to current asst.year and earlier years against the income of the future asst.year without appreciating the fact that as per the scheme of taxation of charitable or religious trust/institution as codified u/s.11,12 and 13, there is no provision for computing loss from property held under trust/institution on account of excess application of income/funds of the trust.

b) The CIT (A) has failed to appreciate the fact that the normal computation of income under respective heads as envisaged u/s 15 to 59 are not applicable to the computation of income in respect of charitable trust/institution for the purpose of claiming exemption under sec.11, 12 and 13 and, therefore, the provisions relating to set-off of loss from one source against the income from another source, set-off of loss from one head against income from another head and carry forward and set-off of loss against the income of subsequent years as envisaged u/s 70 to 79 are also not applicable to the charitable trusts/institutions.

c) The CIT (A) has failed to discuss the issue in detail bringing out the facts and applying the relevant provisions of the Act, but came to a conclusion that excess expenditure/excess application shall be allowed to be carried forward and set-off against the income of the future assessment years and, thereby, rendering the order perverse.

3. Briefly facts of the case are that the respondent-trust is a public religious cum charitable institution registered under the Karnataka Societies Registration Act, 1960. The respondent-assessee was duly registered under section 12A [hereinafter referred to as 'the Act' for short][hereinafter referred to as 'the Act' for short]. Return of income for the assessment year 2012-13 was filed on 29/09/2012 declaring 'nil' income. Against said return of income, the case was selected for scrutiny assessment and the assessment was completed at nil income. The Assessing Officer (AO) determined excess application of income over income of Rs.20,70,172/-. However, excess was not allowed to be carried forward by the AO.

4. Being aggrieved, assessee carried the matter in appeal before the CIT(A), who vide impugned order, allowed the appeal following the decisions of the co-ordinate bench of Tribunal in the following cases:

- i. *Jyothy Charitable Trust* in ITA No.662/Bang/2015
- ii. *St.Charles Medical Society Nirmal Hospital vs. DDIT(Exemption)* in ITA No.346/Bang/2015 dated 9/10/2015
- iii. *Mary Immaculate Society* ITA Nos.240 & 241/Bang/2015 and
- iv. *Public Education Society vs. DDIT(E)* in ITA No.664/Bang/2015 dated 25/08/2015

5. We heard rival submissions and perused material on record. The issue in the appeal is no longer *res integra*. It is covered in favour of the assessee by the decision of the co-ordinate bench in the case of *Jyothi Charitable Trust* (60 taxmann.com 165)(Bang-Trib.) wherein it has been held as follows:

*“13. In the grounds of appeal, the Revenue has reiterated the stand of the AO that there is no provision in the Act to allow carry forward of excess application of income for set off as application of income in subsequent years. The ld. DR reiterated the stand of the Revenue as contained in the grounds of appeal.*

*14. We have considered his submission. 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 v. Maharana of Mewar Charitable Foundation [1987] 164 ITR 439/[1986] 29 Taxman 476 (Raj) and CIT v. Plot Swetamber Murti Pujak Jain Mandal [1995] 211 ITR 293 (Guj.). In CIT v. Institute of Banking Personnel Selection [2003] 264 ITR 110/131 Taxman 386 (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 v. Asstt. DIT [2001] 248 ITR 368/[1999] 105 Taxman 719 (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 Society of Sisters of ST. Anne (supra).*

*15. We are therefore of the view that there is no merit in ground Nos. 3 to 3.2 raised by the Revenue. Accordingly, the same are dismissed.”*

The decision of the CIT(A) is in consonance with the ratio laid down by the co-ordinate bench of the Tribunal in the case of *Jyothi Charitable Trust* (supra). Therefore, we do not find any reason to interfere with the order of the CIT(A).

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

*Order pronounced in the open court on 27<sup>th</sup> September, 2017*

Sd/-

**(VIJAY PAL RAO)**  
**JUDICIAL MEMBER**

Place : Bengaluru.

D a t e d : 27/09/2017.

sd/-

**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

*srinivasulu, sps*

**Copy to :**

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By order

Senior Private Secretary  
Income-tax Appellate Tribunal  
Bangalore