

**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.885/Bang/2016
(Assessment year: 2011-12)

Deputy Commissioner of Income-tax (Exemptions),
Circle-1,
Bengaluru. ... Appellant

Vs.

The Rajiv Gandhi University of Health Sciences,
4th T Block, Jayanagar,
Bengaluru-560041. ... Respondent
PAN:AAALF 0023 C

AND

C.O.No.30/Bang/2017
(In ITA No.885/Bang/2016)
(Assessment year: 2011-12)

ITA No.805/Bang/2016
(Assessment year: 2011-12)

The Rajiv Gandhi University of Health Sciences,
Bengaluru. ... Cross-Objector/
Appellant

Vs.

Deputy Commissioner of Income-tax (Exemptions),
Circle-1,
Bengaluru. ... Respondent

Revenue by : S/Shri R.N.Parbat & Nambirajan (DRs)
Assessee by : Shri C.Suman Lunkar, Advocate

Date of hearing : 26/09/2017
Date of pronouncement : 26/12/2017

O R D E R

Per BENCH :

The appeal by the revenue and cross objections by the assessee are directed against the order of the learned Commissioner of Income-

tax (Appeals), LTU, Bengaluru [‘CIT(A)’] dated 10/02/2016 for the assessment year 2011-12. The assessee also filed cross objections in CO No.30/Bang/2017.

2. Briefly facts of the case are as under: The respondent-assessee is a public charitable trust registered under the provisions of section 12AA of the Income-tax Act, 1961 [hereinafter referred to as ‘the Act’] with the object of rendering services in Medical education. The return of income for the assessment year 2011-12 was filed on 30/03/2013 declaring nil income. After processing the return of income under the provisions of section 143(1) of the Act, the assessment was completed u/s 143(3) of the Act vide order dated 26/03/2014 at total income at ‘nil’. While doing so, the Assessing Officer allowed accumulation of income at 15% of the net income as against claim of the assessee that it should be on gross receipt.

3. Being aggrieved, an appeal was filed before the CIT(A), who vide impugned order, had allowed the accumulation of 15% of gross receipts following the decision of Tribunal in the case of *M/s.Jyothi Charitable Trust* in ITA No.662/Bang/2015 and *St.Charles Medical Society Nirmal Hospital vs. DDIT(Exemption)* in ITA No.364/Bang/2015 dated 09/10/2015.

4. Being aggrieved by this order, the revenue is in appeal before us in the present appeal raising the following grounds of appeal in ITA No.885/Bang/2016:

Net receipts Vs. Gross receipts

i) Whether, in the given facts and circumstances, the CIT(A) is correct in law in not considering the Board Circular on this issue i.e. *Board Circular no. 12-(PXX-7 of 1968) dated 26.11.1968*, on which the AO placed reliance for disallowance of accumulation /set apart of income u/s 11(1)(a), wherein it is clearly explained that if a trust fails to comply with accumulation provisions u/s 11(2), then the entire income accumulated would be liable to assessment u/s 11(3), including 15% of income set apart or accumulated u/s 11(1)(a), and, therefore, rendered a perverse decision.

Page 3 of 8

ii) Whether, in the given facts and circumstances, the CIT(A) is correct in law in holding that the provisions of sub-section (1) and (2) of section 11 operate independently, and, therefore, disallowance of accumulation u/s 11(2) has no effect on allowance of set apart/accumulation u/s 11(1)(a).

iii) Whether, in the given facts and circumstances, the CIT(A) is correct in law in ignoring the fact that in case the assessee is claiming 15% of income set-apart/accumulation on the basis of gross receipts, the assessee shall produce evidence that such amount is invested in the modes specified u/s 11(5) r.w.s. 13(1)(d)(i). However, as the net surplus available in the hands is less than 15% of gross receipts, the assessee will not be in a position to invest higher amount/more than net surplus in the modes specified u/s 11(5).

iv) Whether, in the given facts and circumstances, the CIT(A) is correct in law in not considering the fact that if the gross receipts are considered as income within the meaning of Section 11(1)(a), then in the event of assessee losing the exemption due to violation of conditions stipulated u/s 13, then the entire gross receipts being the income is liable to be taxed, which is grossly unjustified and unviable and beyond the purview of Section 11(1)(a). On the other hand, it is not the case of the assessee to argue that for the purpose of claiming 15% of income set-apart/accumulation, income to be reckoned on the basis of gross receipts, but in the event of assessee losing the exemption, the income will be recognized on the basis of net surplus/book profits rather than gross receipts.

5. We heard rival submissions and perused the material on record. The issue raised in the present appeal is squarely covered by the order of the co-ordinate bench of Tribunal in ITA No.899/Bang/2016 dated 07/04/2017 in the case of *ITO vs. Shraddha Trust*. The relevant paragraph is reproduced below:

“7. The other grounds of appeal relates to Whether accumulation of income should be on gross receipt or net income after deducting the expenditure, is covered by the decision of the Hon’ble Supreme Court in the case of CIT vs. Programme for Community Organisation (248 ITR 1)(SC) wherein it was held that 25% should be calculated on the gross receipts of

income and not on the net income. Therefore, these grounds of appeal raised by the revenue are dismissed.”

Respectfully following the ratio laid down in the above decision we dismiss the grounds of appeal raised by the revenue.

6. In the result, the appeal filed by the revenue is dismissed.
7. The assessee raised the following grounds of appeal in ITA No.805/Bang/2016:
 1. The Appellant is an Educational University set up under the Act of Karnataka Legislature with the basic objective of providing instruction and training in such branches of medicine and allied sciences, as may be considered suitable and to make provision for research and for the advancement and dissemination of knowledge in health services, striving to maintain at all times highest possible standards of academic excellence. For the purposes of discharging the objectives of the Appellant which involves affiliation of colleges, regulating admission of students to courses in various colleges, conducting of examinations, awarding of degrees among others and defraying the expenditure thereof as also conserve funds for the maintenance and growth of the University, the Appellant collects fees under different heads which forms part of its gross receipts along with receipts by way of interest on Corpus Funds of the Appellant deployed in deposits with the Banks, pending their application for the specified objects.

2. The Appellant in the Previous Year relevant to Assessment Year 2013-14 which is under appeal had gross receipts of Rs 114,93,52,261, of which it applied Rs 59,45,13,368 towards its objects, as detailed above, apart from accumulating Rs 17,24,02,839, being 15% of the gross receipts which was not required to be spent, u/s 11(1)(a) and filed option under section 11(2) for accumulating Rs 38,24,36,054 representing shortfall in application of 85% of the gross receipts for the charitable objects.
3. The Learned Assessing Officer, while computing 15% accumulation u/s 11(1)(a) restricted it to 15% of the net receipts i.e., gross receipts as reduced by the revenue expenditure under different heads, resulting in the accumulation being restricted to Rs 8,32,25,834 against Rs 17,24,02,839 claimed by the appellant.
4. The Appellant aggrieved by the above, appealed before the Commissioner of Income Tax(Appeals)-14 and sought in the grounds of appeal that the amount to be calculated u/s 11(1)(a) should be with reference to gross receipts and not the net receipts, as assessed by Assessing Authority. The grounds urged before the Commissioner of Income Tax(Appeal) forms part of this appeal & the same is marked as Annexure A.
5. The Commissioner of Income Tax(Appeals)-14 while disposing off the appeal agreed with the contention of the Assessing Officer that the accumulation u/s 11(1)(a) should be worked out with reference to net receipts and not gross receipts. The first Appellate Authority while coming to that conclusion sought to make an artificial distinction between the income as understood u/s 11(1)(a) and the income as per commercial parlance and came to the conclusion that such income shall be net income

i.e. amount left in the hands of the assessee, after meeting the expenditure incurred to earn such income. All the same, reference was made to the jurisdictional ITAT order in the case of M/s. Jyothy Charitable Trust in ITA No. 662/Bang/2015 and St. Charles Medical Society Nirmal Hospital Vs. DDIT(Exemption) Circle 17(2), Bangalore in ITA No. 364/Bang/2015 dt. 09.10.2015, Mary Immaculate Society ITA 240 & 241/Bang/2015. which were decided in favour of the

assesses and the gross receipts should be considered and not the net receipts. The Department has filed an appeal before the Hon'ble High Court on similar issue. The Appellate Authority allowed the ground contended by the Appellant respectfully following the jurisdictional ITAT.

6. The first Appellate Authority erred in its observations that the Net Receipts i.e. Gross Receipts less expenses shall be the criterion for arriving at 15% of the amount not required to be spent during the year and not the Gross Receipts. He ought to have noticed that this question came up in the case of ACIT V. ALR Charitable Trust reported in 216 ITR 697 wherein the Hon'ble Supreme Court made the following observations as an illustration at Para 7.04:

“If Rs 100000 are earned as the total income of the previous year by the trust from property held by it wholly for charitable & religious purposes & if Rs. 20000 are actually applied during the previous year by the said trust to such charitable or religious purposes the income of Rs 20000 will get exempted from being considered for the purpose of income tax under the first part of section 11(1). So far as the remaining Rs 80000 are concerned if they could not be actually applied for such religious or charitable

if they could not be actually applied for such religious or charitable purposes during the previous year then as per section 11(1)(a) at least 25% of such total income from property or Rs 10000, whichever is higher, will also earn exemption from being considered as income for the purpose of income tax, that is 25000 will thus get excluded from the tax net. Thus out of the total income of Rs. 100000 which has accrued to the trust Rs 25000 will earn exemption from payment of income tax as per section 11(1)(a), second part”.

7. From the reading of the above ratio of the judgment, it is clear that setting apart of 15% can only be with reference to the gross total income/receipts and not net receipts, which the Assessing Officer and the first Appellate Authority, failed to appreciate.

8. For this and other reasons that maybe adduced at the time of hearing, it is prayed that an appropriate order may be passed on the ground raised in the appeal.

8. We observe from the grounds of appeal filed by the assessee that no grievance is pointed out by the assessee. In fact, the grounds of appeal are in support of the order of the CIT(A). Hence, the appeal filed by the assessee is dismissed.

9. The cross objections filed by the assessee are in support of the order of the CIT(A). Since the appeal of revenue is dismissed, the cross objections become infructuous and hence dismissed.

Order pronounced in the open court on 26th December, 2017

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Place: Bengaluru
Date : 26/12/2017
srinivasulu, sps

Copy to :

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- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Senior Private Secretary
Income-tax Appellate Tribunal
Bangalore