

**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.118/CTK/2015
Assessment Year : 2011-12

Kalinga Relief & Charitable Trust, Plot No.383, 384, KIIT Campus-1, Patia, Bhubaneswar	Vs.	JCIT, Range-2, Aayakar Bhavan, Bhubaneswar.
PAN/GIR No.		
(Appellant)	..	(Respondent)

ITA No.379/CTK/2015
Assessment Year : 2011-12

JCIT, Range-2, Aayakar Bhavan, Bhubaneswar	Vs.	Kalinga Relief & Charitable Trust, Plot No.383, 384, KIIT Campus-1, Patia, Bhubaneswar
PAN/GIR No.		
(Appellant)	..	(Respondent)

Assessee by : Shri S.K.Agrawalla, AR
Revenue by : Shri A.K.Mohapatra/Subhendu Dutta, DR

Date of Hearing : 26/07/ 2017
Date of Pronouncement : 27 /07/ 2017

ORDER

Per N.S.Saini, AM

These are cross appeals filed by the assessee and the revenue against the order of CIT(A)-II, Bhubaneswar, dated 16.2.2015, for the assessment year 2011-12.

First we take up the appeal filed by the assessee.

2. In Ground Nos.1 & 2 of the appeal, the grievance of the assessee is that the CIT(A) was not justified in not allowing deduction for expenses of Rs.4,12,96,462/- given to Kalinga Institute of Social Sciences for expenditure incurred on behalf of the assessee for providing free education, fooding, clothing and medical facilities to the tribal students.

3. Facts in brief are that the assessee trust is a member of KIIT group of institutions located at Patia, Bhubaneswar. The trust was created on 18.02.2003 through a Trust Deed and was allowed registration u/s. 12AA of the I.T.Act, 1961. The trust established a school for tribal children under the name and style "Kalinga Institute of Social Science" (KISS). For the children studying in the school, the trust provides accommodation, food, clothing, education, healthcare etc. completely free of cost. With effect from the date of formation of this society, assessee trust had transferred substantial assets to the society and started providing funds for the usual running of the school under the society.

4. The Assessing Officer on perusal of Schedule-3 forming part of income & expenditure account, found that the trust has debited a sum of Rs.4,12,96,462/- under the head "contribution to the expenditure of KISS". In reply to show cause notice, the assessee submitted the copies of 12AA registration of KRCT, 26AS, statement of month-wise donations given by

various employees of KIIT School of Biotechnology, KIIT University to KRCT, i.e. assessee and copies of certain bills and vouchers. It was stated before the Assessing Officer that KISS has the total income of Rs.17,67,53,608/- out of which a sum of Rs.4,42,96,462/- was only from KRCT, i.e. assessee. Hence, the assessee is not funding the KISS rather it had given the money for the students transferred from KRCT to KISS and, therefore, the expenses incurred for running this school were charitable expenses and allowable as per the provisions of section 11 of the Act. Reliance was placed on the decision of Hon'ble Delhi High Court in the case of CIT vs Shri Ram Education Foundation (2001) 171 CTR (Del) 220. It was further submitted that the assessee had transferred its fund to another society with a specific direction that this fund will be utilized for the purpose of education of the Tribal children of the KISS, hence, the fund given by one trust to another trust with specific direction for the purpose of charitable activities will be treated as application of income within the meaning of section 11 of the Act. For this, reliance was placed on the decision of Hon'ble Delhi High Court in the case of CIT vs. Sri Ram Memorial Foundation (2004) 190 CTR (Del) 454. It was submitted that the transfer of fund is not tantamount to violation of provisions of section 13(1)(c) or 13(1)(d) of the Act. It was further submitted that as per the primary objects of the trust, the funds were transferred to KISS for the feeding, education, health, shelter, etc of the tribal children and, therefore, the expenses are charitable in nature and allowable. The Assessing Officer

noticed that the control of the assessee trust and the new society i.e. KISS was with the same group. He was of the view that the fund of the assessee trust was provided to another society which did not have the benefit of registration u/s.12AA of the Act. The Assessing Officer observed that in earlier assessment year, the assessee had transferred funds to KISS under the head of "bridging fund" and during the year under consideration, the assessee has merely changed the nomenclature from bridging fund to contribution to the expenditure of KISS. He also observed that the assessee trust has no accumulated surplus funds which has been carried forward to the current financial year 2010-2011 and, therefore, the transfer of fund to KISS cannot be treated as application of income in view of the provisions of section 11 of the Act as the same had been paid out of current year's income. Accordingly, he made an addition of Rs.4,12,96,462/- and added the same to the income of the assessee trust

5. On appeal, the assessee reiterated the submissions made before the Assessing Officer.

6. The CIT(A) confirmed the action of the Assessing Officer.

7. Before us, Id A.R. filed a copy of the decision of the Cuttack Bench of the Tribunal dated 30.10.2015 in ITA Nos.522 & 523/CTK/2013 in assessee's own case for the assessment years 2009-2010 and 2010-11 and

submitted that similar addition has been deleted by the Tribunal and, therefore, this issue is squarely covered in favour of the assessee.

8. Ld D.R. supported the orders of lower authorities.

9. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. We find that similar issue had come up for consideration before this Bench of the Tribunal in assessee's own case for the assessment years 2009-10 & 2010-2011 (supra), wherein, the Tribunal has deleted the addition by observing as under:

"8. We have considered the rival contentions on this issue and gone through the orders of the authorities below. We have perused the Memorandum of Understanding between the assessee trust and KISS, wherein, it is clearly mentioned as follows:

"1. Educate the students of KRCT from KG to Post Graduate level.

2. Provide hostel & mess facilities for the students of KRCT without any cost from the students.

We also find from the MOU, the responsibilities imposed on the society by the assessee trust as under:

"i) KISS will work in the field of education for the tribal students of KRCT `without taking any fees from students.

- ii) KRCT will provide necessary funds to KISS to the extent mobilized for this purpose by KRCT."

The assessee trust is registered under section 12AA of the Act as charitable trust doing the charitable activities for the betterment of the society at large. The authorities below have accepted the charitable nature of the assessee trust. Neither the AO nor Id CIT(A) has doubted the charitable nature for which the trust is formed. The authorities below have not also questioned regarding the genuineness of the charitable activities of the trust or whether the trust is doing some business activities. Therefore, it is ample clear that the formations of the assessee trust and its activities are genuine and legally approved under the Income tax Act. The society was providing free education, fooding, clothing and medical facilities to the deprived children of the scheduled tribes. Besides this formal education, vocational training in different streams has also been provided to the students so that they can earn their livelihood after schooling. The said registered society is an extension of the assessee trust itself. From the above, it is clear that the intention of the assessee trust is nothing but to provide charity to the needy and betterment to the society. The assessee has transferred the fund to the society so that the society can bear the expenditure of the children. The assessee trust had received the donation amount and from that it had paid the society. In other words, even in the absence of society, the assessee trust would have carried on the charitable activities and whatever amount has been spent that is for the benefit of the tribal children. Therefore, the Bridging Fund is the reimbursement of expenses to the society and it is an extension of charitable work of the assessee trust carried on through the society. Therefore, we set aside the order of the Id CIT(A) on this issue and decide that the transfer of funds from the assessee trust to society i.e. KISS under the head "Bridging Fund" is an application of assessee's income for the charitable purpose. Hence, we decide this issue in favour of the assessee."

10. Ld D.R. could not bring on record any material to show that the above quoted order of the Tribunal was varied in appeal by any other higher forum. Hence, facts being identical, respectfully following the decision of co-ordinate Bench of this Tribunal, we set aside the orders of

lower authorities and allow the grounds of appeal of the assessee deleting the addition of 4,12,96,462/-.

11. With regard to Ground No.3 of the appeal, which is in respect of charging of interest u/s.234B of the I.T.Act, 1961, no arguments were made by the Id A.R of the assessee at the time of hearing. We hold that charging of interest u/s.234B is consequential and, accordingly, dispose of this ground of appeal.

12. In the result, appeal filed by the assessee is partly allowed.

Now, we take up the appeal of the Revenue.

13. In its grounds of appeal, the revenue is aggrieved by the direction of the CIT(A) to allow the carry forward and set off of the deficit from earlier financial years in the computation of income for the assessment year 2011-

12. The brief facts of the case are that the Assessing Officer did not allow carry forward and set off of the deficits relating to the earlier financial year on the ground that the assessee did not have any accumulated surplus funds at its disposal as the expenses exceeded its receipts. According to the Assessing Officer, the transfer could not be treated as legitimate application of income u/s.11 of the Act since the same had been paid out of "current year's income.

14. On appeal, the CIT(A) observed that the accounts of a trust being a going concern continue seamlessly from financial year to financial year and it is impossible and statutory unheard of insist on an artificial segregation

of funds to extract and quarantine these for a given financial year for application of these to such given financial year. The CIT(A) also observed that if the returns of income have been filed by the assessee trust within the statutory timeframes stipulated u/s.139 of the act, there is no reason to deny the assessee the benefits of the set off of the deficits relating to the earlier financial year from the assessed income for the impugned assessment year. Hence, the CIT (A) allowed the carry forward and set off of the deficits from earlier years.

15. Being aggrieved by the said order of the CIT (A), the revenue is in appeal before us.

16. Ld D.R. supported the order of the Assessing Officer.

17. On the other hand, Id A.R. submitted that the issue of carry forward and set off of the deficit is covered by the decision of the Cuttack Bench of the Tribunal in the case of the assessee in ITA Nos.522 & 523/CTK/2013 for the assessment years 2009-2010 & 2010-2011, wherein, following the decision of the Tribunal in IT(ss)A No.76,77,78,82,83,84/CTK/2009 and ITA No.172 & 173/CTK/2012 order dated 21.12.2012, the Tribunal has held the Revenue has not disputed the fact that deficit in year was on account of amount spent in construction/purchase of the building, is for charitable purposes and, therefore, the assessee is entitled to set off of the same i.e. year-wise deficit or loss as may be adjusted against the receipt/income of

a subsequent year. The facts being similar in the year under consideration, the appeal filed by the revenue is to be dismissed.

18. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the undisputed facts are that the Assessing Officer did not allow carry forward And set off of the deficits relating to earlier financial year on the ground that the assessee did not have any accumulated surplus funds at its disposal as the expenses exceeded its receipts.

19. On appeal, the CIT(A) allowed the appeal of the assessee.

20. We find that the issue is no longer res-integra. The similar issue of adjustment of expenditure incurred earlier against the surplus of the subsequent year had come up before the Hon'ble Mumbai High Court in the case of CIT vs Institute of Banking reported in 264 ITR P. 110 (Bom.) wherein the Assessing Officer did not allow carry forward of excess expenditure to be set off against the surplus of subsequent year on the ground that in the case of charitable trust, their income was assessable under self contained code mentioned in section 11 to 13 of the Income Tax Act and that the income of the charitable trust was not assessable under the head "Profits and gains from business profession" u/s 28 in which the provisions of carry forward of losses was relevant. That in a case of 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. Their Lordships have held that there is no merit in this argument of the Department. Income derived from the trust property has also got to be computed on commercial principals and if commercial principals are applied then adjustment of the expenditure incurred by the Trust for charitable or religious purposes in earlier years against the income earned by the Trust in subsequent year will have to be regarded as application of income of the Trust for charitable or religious purposes in 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 u/s 11(1) (a) of the Act.

21. We, therefore, find that the order of the CIT(A) is in consonance with the order of the order of the Hon'ble Bombay High Court in the case of Institute of Banking (supra). Hence, we confirm the order of the CIT(A) and dismiss the ground of appeal of the Revenue.

22. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 27 /07/2017 in the presence of parties.

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 27/07/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : /Assessee : Kalinga Relief & Charitable Trust, Plot No.383, 384, KIIT Campus-1, Patia, Bhubaneswar
2. The Respondent./Revenue: JCIT, Range-2, Aayakar Bhavan, Bhubaneswar
3. The CIT(A)-II, Bhubaneswar
4. Pr.CIT-II, Bhubaneswar.
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack