

IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA No.1381/Bang/2017
Assessment year : 2012-13

M/s. Rams Education Foundation, Behind Vaikunta Kalyana Soudha, Gokula, Bangalore – 560 004. <b>PAN: AAATR 5602D</b>	Vs.	The Income Tax Officer (Exemptions), Ward 2, Bangalore.
APPELLANT		RESPONDENT

ITA No.1464/Bang/2017
Assessment year : 2012-13

The Income Tax Officer (Exemptions), Ward 2, Bangalore.	Vs.	M/s. Rams Education Foundation, Behind Vaikunta Kalyana Soudha, Gokula, Bangalore – 560 004. <b>PAN: AAATR 5602D</b>
APPELLANT		RESPONDENT

Assessee by	:	Shri S.V. Ravishankar, Advocate
Revenue by	:	Dr. P.V. Pradeep Kumar, Addl. CIT

Date of hearing	:	19.03.2018
Date of Pronouncement	:	23.03.2018

**ORDER**

*Per Sunil Kumar Yadav, Judicial Member*

These appeals are preferred by the assessee and the revenue against the order of the CIT(Appeals) pertaining to assessment year

2012-13. Since these appeals were heard together, these are being disposed of through this consolidated order. We, however, prefer to adjudicate them one after the other.

**ITA No.1381/Bang/2017**

2. This appeal is preferred by the assessee assailing the order of the CIT(Appeals) *inter alia* on the following grounds:-

“1. The Order passed by the learned Hon'ble Commissioner of Income Tax [Appeal] -14 in so far as it is against the appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.

2. The appellant denies to the amount of net surplus of Rs. [42,96,723/-] or as may be determined after giving effect to CIT(A) order is not correct on the facts of the case.

3. The learned CIT [A] failed to appreciate that the deduction of 15% under section 11 [1] [a] is to be calculated on the gross receipts and not on amount left after application towards expenses incurred for the objects of the trust, under the facts and circumstances of the case.

4. The learned CIT [A] failed to appreciate that the issue whether the provisions of the gross receipts or on the net receipts has been decided by the Hon'ble Co-Ordinate Bench of decision of this Hon'ble Tribunal in the case of Jyothi Charitable Trust in 662/Bang/2015, order dated 14/08/2015, Capuchin Friar Services of Society [ITA No.367/Bang/2015], St. Charles Medical Society Nirmal Hospital [ITA No.364/Bang/2015] and Mary Immaculate Society [ITA No.240 & 241/Bang/2015] which has held that the accumulation of 15% under section 11 [1][a] of the Act has to be computed on the gross receipts and not on the net receipts, which is squarely covered in favour of the appellant and failed to apply a binding decision is not correct in law on the facts and circumstances of the case.

5. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

6. In view of the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”

3. Though various grounds are raised, but they all relate to the issue as to whether for the purpose of accumulation of income of 15% u/s. 11(1)(a) of the Income-tax Act [hereinafter referred to as “the Act”], one has to take the gross receipt or the net receipt after reducing the expenditure incurred for charitable purposes from the gross receipts.

4. During the course of hearing, our attention was invited that this issue is squarely covered by the order of the Tribunal in the case of *Jyothi Charitable Trust v. DCIT in ITA No.662/Bang/2015* in which it has been held that net receipts are to be taken into account for computing the accumulation of income of 15% u/s. 11(1)(a) of the Act. The relevant observations of the Tribunal are extracted hereunder for the sake of reference:-

“15. The third issue that arises for consideration in this appeal is as to whether 15% accumulation for application in future has to be calculated on gross receipts or net receipts after deduction of revenue expenditure. The Assessee claimed accumulation of income for application for charitable purpose at 15% of the gross receipts. The AO was of the view that accumulation will be allowed only to the extent of 15% of the income after revenue expenditure. In other words income to be set apart u/s.11(1)(a) of the Act has to be computed at 15% of the net income i.e., gross receipts minus revenue expenditure and not on the gross receipts as claimed by the Assessee. Since in the case of the Assessee, the gross receipts after revenue expenditure was nil, the AO denied the benefit of accumulation to the Assessee.

16. On appeal by the Assessee, the CIT(A) confirmed the order of the AO. Hence ground No.4 raised by the Assessee before the Tribunal.

17. The issue to be decided is therefore as to whether for the purpose of computing accumulation of income of 15% under Sec.11(1)(a) of the Act, one has to take the gross receipts or gross receipts after expenditure for charitable purpose i.e., the net receipts. This issue is no longer res integra and has been decided by the Special Bench Mumbai in the case of Bai Sonabai Hirji Agiary Trust Vs. ITO 93 ITD 0070 (SB). The facts in the aforesaid case were that the assessee was a public charitable trust enjoying exemption under s. 11 of the IT Act. As per the requirement of s. 11(1) of the IT Act, as it prevailed at that point of time, the assessee had to apply 75 per cent of its income for the objects and purposes of the trust and the assessee was permitted to accumulate or set apart up to 25 per cent of its income, which was subject to fulfillment of other conditions. While calculating the aforesaid 25 per cent, the important question which arose was as to whether for this purpose, the gross income earned by the assessee is relevant or the income as computed in accordance with the provisions of IT Act. In other words, whether outgoings from out of gross income which are in the nature of application of income, should be first deducted from the gross income and 25 per cent of only the remaining amount should be allowed to be accumulated or set apart. The Special Bench of the ITAT on the issue held as follows:-

“9. Coming to the merits of the issue, we are of the view that the same is clearly covered by the decision of the Hon’ble Supreme Court in the case of CIT vs. Programme for Community Organization (supra). In the decision, their Lordships, after taking note of provisions of s. 11(1)(a), have held as under :

"Having regard to the plain language of the above provision, it is clear that a charitable or religious trust is entitled to accumulate twenty-five per cent of its income derived from property held under trust. For the present purposes, the donations the assessee received, in the sum of Rs. 2,57,376, would constitute its property and it is entitled to accumulate twenty-five per cent thereof. It is

unclear on what basis the Revenue contended that it was entitled to accumulate only twenty five per cent of Rs. 87,010.

For the aforesaid reasons, the civil appeal is dismissed."

It is clear from the above that deduction of twenty-five per cent was held to be allowable not on total income as computed under the IT Act. Any amount or expenditure, which was application of income, is not to be considered for determining twenty five per cent to be accumulated. Their Lordships, as noted earlier, affirmed the decision of Kerala High Court in (1997) 141 CTR (Ker) 502 : (1997) 228 ITR 620 (Ker) (supra) wherein it is held as under :

"At the outset, the statutory language of s. 11(1)(a) of the IT Act, 1961, relates to the income derived by the trust from property. The trust is required to be wholly for charitable or religious purposes, and the income is expected to have relation to the extent to which such income is applied to such purposes in India. It is thereafter the statutory provision proceeds further that such income is not to be understood to be in excess of 25 per cent of the income from such properties. In other words, the very language of the statutory provision under consideration sets apart 25 per cent of the income from the source of property with reference to the extent to which such income is applied for such purposes, charitable or religious. In other words, for the purpose of s. 11(1)(a) of the Act, the income in terms of relevance would be the income of the trust from and out of which 25 per cent is set apart in accordance with the spirit of the statutory provision."

This means that, when it is established that trust is entitled to full benefit of exemption under s. 11(1), the said trust is to get the benefit of twenty-five per cent and this twenty-five per cent has to be understood as income of the trust under the relevant head of s. 11(1). In other words, income that is not to be included for the purpose of computing the total income would be the amount expended for purposes of trust in India. Their Lordships in the above case have emphasized on the clear and unambiguous language of s. 11(1)(a) and decided the

matter on the basis of the same. It has been held that as per the statutory language of the above section the income which is to be taken for purpose of accumulation is the income derived by the trust from property.

If both the decisions are carefully read, it becomes evident that any expenditure which is in the shape of application of income is not to be taken into account. Having found that trust is entitled to exemption under s. 11(1), we are to go to the stage of income before application thereof and take into account 25 per cent of such income. Their Lordships have pointed that the same has to be taken on "commercial" basis and not "total income" as computed under the IT Act. Their Lordships in the decided case rejected the contention of the Revenue that the sum of Rs 1,70,369 which was spent and applied by the assessee for charitable purposes was required to be excluded for purpose of taking amount to be accumulated.

Having regard to the clear pronouncement of their Lordships of the Supreme Court, it is difficult to accept that outgoings which are in the nature of application of income are to be excluded. The income available to the assessee before it was applied is directed to be taken and the same in the present case is Rs. 3,42,174. Twenty five per cent of the above income is to be allowed as a deduction. Similar view has also been taken by the Hon'ble Madhya Pradesh High Court in *Parsi Zorastrian Anjuman Trust vs. CIT (supra)*. No reason whatsoever has been given by the Revenue authorities for deducting Rs. 2,17,126 in this case for purposes of s. 11(1)(a). The decision cited on behalf of the Revenue did not take into account the decision of the Supreme Court referred to above. The circular of CBDT has also been considered by the Hon'ble Kerala High Court in its decision referred to above. Accordingly the question referred to is answered in the affirmative and in favour of the assessee."

18. The aforesaid decision clearly supports the plea of the Assessee. Following the same, we hold that the accumulation u/s.11(1)(a) of the Act should be allowed as claimed by the Assessee. Ground No.4 raised by the Assessee is accordingly allowed."

5. Though the Id. DR has contended that the CIT(Appeals) while adjudicating the issue has considered this order of the Tribunal and has distinguished the same, therefore this order cannot be relied on.

6. Having carefully examined the order of the CIT(Appeals) in the light of the order of the Tribunal in the case of *Jyothy Charitable Trust (supra)* and the Special Bench order of the Tribunal in the case of *Bai Sonabai Hirji Agiary Trust Vs. ITO, 93 ITD 0070 (SB)*, we find that though the CIT(Appeals) has made a reference to this order, but he has not specifically pointed out any reasons for not following the same. When the Tribunal has taken a particular view, the CIT(Appeals) is supposed to follow the same instead of taking a contrary view. We are therefore of the considered opinion that the impugned issue is squarely covered by the aforesaid order of the Tribunal, therefore by following the same, we direct the AO to consider the net receipt for the purpose of computation of accumulation of income of 15% u/s. 11(1)(A) of the Act.

**ITA 1464/Bang/2017**

7. This appeal is preferred by the revenue assailing the order of CIT(Appeals) *inter alia* on the following grounds:-

“1. Whether in the facts and circumstances of the case and in law, the learned CIT(A) erred in allowing depreciation in respect of assets which have already been allowed as application of income in its entirety in earlier years.

2. Whether in the facts and circumstances of the case and in law, the learned CIT(A) is correct in allowing depreciation which amounts to double deduction when already full expenditure has been allowed in earlier years.

3. The CIT(A) has failed to appreciate the fact that the Hon'ble Kerala High Court in the case of Lissie Medical Intuitions Vs. CIT (348 ITR 344) has held that depreciation cannot be allowed on assets, where cost of such assets has already been allowed as application of income in the year of acquisition/ purchase of asset.

4. The CIT(A) has failed to appreciate that the Hon'ble Supreme Court in the case of Escorts Ltd. & another Vs. Union of India (199 ITR 43), while dealing with the issue of allowance of expenditure on scientific research u/s 35(1)(iv) [corresponding to section 10(2) (xiv) of the I.T. Act, 1922] held that any expenditure of a capital nature (or incurred towards purchase of capital assets) on scientific research allowed as deduction u/s 35(1)(iv) cannot be allowed once again as deduction in the form of depreciation on such capital assets. While doing so, it was observed by the Hon'ble Supreme Court that no legislature could have at all intended a double deduction in regard to the same business outgoing and if it is intended, it would be clearly expressed in the statute itself. Accordingly, it was held that even in absence of clear statutory indication to contrary, statute should not be read so as to permit an assessee two deductions i.e. once in the form of expenditure incurred towards purchase of capital assets and secondly, in the form of depreciation on such capital assets. It was also held that even before the amendment of the Act in the form of insertion of clause (iv) of sub section (2) of section 35 by Finance Act, 1980, prohibiting allowance of depreciation, the Act did not permit a deduction for depreciation in respect of cost of capital asset acquired for the purpose of scientific research to the extent such cost had been written off/ claimed as deduction u/s 35(1)(iv) on the ground that the amendment only set out more clearly and categorically what the provision intended even earlier.”

8. Though various grounds are raised, but they all relate to the claim of depreciation raised by the assessee which was disallowed on the ground that it amounts to double deduction in the light of the fact that the expenditure have already been allowed in the earlier years. During the course of hearing, our attention was invited that this issue is squarely

covered by the order of the Tribunal and the judgment of the jurisdictional High Court.

9. The Id. DR placed reliance upon the order of the AO.

10. Having carefully examined the orders of the authorities below in the light of the judgment of the High Court and other orders of the Tribunal in which it has been categorically held that the entire claim of depreciation has to be allowed. The relevant observations of the CIT(Appeals) are extracted hereunder for the sake of reference:-

“4.2 The issue of claim of depreciation by Trusts has seen multiple arguments. The AOs have mostly relied upon the Hon'ble Apex Court's judgment in the case of Escorts Ltd. (supra). This decision was delivered in the context of claim of deduction u/s.35(1)(iv) but had made general observations about the claim of double deduction which is not allowable under the Income Tax Act. The claim of deduction for depreciation by entities claiming exemption u/s. 11, has been sought to be differentiated from the decision of Escorts Ltd., by some High Courts such as the Hon'ble Punjab & Haryana High Court in case of Market Committee Pipli (supra). This differentiation has been supported by the jurisdictional ITAT starting with the case of Cutchi Memon Union (Supra) which was further reaffirmed in Jyothy Charitable Trust (supra) and a swathe of other cases. The ADs have also derived strength from the decision of the Hon'ble Kerala High Court in Lissie Medical Institutions (supra) which followed the arguments of the Hon'ble Apex Court the in the case of Escorts Ltd (supra). The Hon'ble Delhi High Court has also endorsed this position in case of DIT(Exemption) Vs. Charanjiv Charitable Trust (2014) 43 Taxmann.com 300. I have nothing new to add to this debate.

4.3 The decisions of the jurisdictional High Court as applicable to the facts of the present matter have been analyzed. The first decision is that of Society of Sisters of St. Anne dt. 26.08.1983 for AY 1977-78. It is seen that the latest decision of the Hon'ble High Court in case of AI Ameen Charitable Fund

Trust has only followed and reiterated (para 20) this decision of 1983.

4.4 In the case of Society of Sisters of St. Anne, the period involved was AY 1977-78 and the issue before the Hon'ble Court was different from that involved in the present appeal. There the ITO had disallowed depreciation stating that such a notional expenditure was only applicable for computation of income under the head "Business" falling u/s.28 and not for "income from property held under trust" under Sec.11(1) which contemplated actual expenditure/application of income. The Hon'ble Court examined the principles of mercantile accounting and the meaning of "depreciation" from the literature on book keeping and accounts (para 14-16) and concluded that "it is not in dispute that if the mercantile system is followed the depreciation allowance in respect of the trust property should be allowed" (para 17). This was meant to counter the Revenue's insistence "that there are enough indications in Sec. 11 to exclude the mercantile system of accounting" (para 18).

4.5 The above discussion around the application of mercantile accounting for computing a trust's income u/s.11(l) following general commercial principles was used by the Hon'ble Court to support the claim of depreciation by the Trust. The question of double deduction, which is at the heart of the AO's arguments in the present matter, was never under consideration nor even discussed by the Hon'ble Apex Court in this judgement.

4.6 A notable observation of the Hon'ble Supreme Court in this decision, however, is very pertinent to the present appeal. At para 19, it was observed as follows:

"the depreciation if it is not allowed as a necessary deduction (or computing the income from the charitable institution, then there is no way to preserve the corpus of the trust for deriving the income."

The above observation was relevant for AY 1977-78 when Sec. 11 (l)(d), (which was inserted with effect from 01.04.1989) did not exist. Its provisions read as follows:

Sec.11(1) Subject to the provisions of Sec.60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income .. "

(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

4.7 Prior to 01.04.1989, the Hon'ble Apex Court had very rightly concluded that in the absence of depreciation allowance, a trust had no means of preserving its corpus for deriving income. After 01.04.1989, the Income Tax Act had, in Sec. 11(1)(d), very consciously introduced a means of preserving the trust's corpus by providing for corpus donations not to be treated as income. Under the changed situation post 01.04.1989, therefore, the claim of depreciation is not the sole method available for financing the corpus. Whenever a trust receives donations with a specific direction that it be treated as corpus, such corpus donations are available for maintaining the capital base of the trust. Hence, after 01.04.1989 the Hon'ble High Court's judgment in case of Society of Sisters of St. Anne cannot be applied without examination of the facts in a case involving a claim of depreciation.

4.8 The facts of the case must be scrutinized to see whether any corpus donation was available when the trust was making a claim for depreciation. If it was, the depreciation should be reduced/adjusted to the extent of such availability of corpus donations. Since the Hon'ble High Court in case of AI Ameen Charitable Fund Trust has followed its earlier judgement in case of Society of Sisters of St. Anne, it naturally follows that this later judgement will also be applied with due consideration to the specific facts of the case. Le. whether the claim of depreciation exists alongside the availability of corpus donations or not. If there is no corpus donation the assessee's claim of depreciation will be admitted following the ratio of the Hon'ble High Court's decision.

4.9 The decision of the jurisdictional ITAT Bench in case of Jyothy Charitable Trust (supra) is cited in support of the claim of deprecation. It has also been followed by my predecessor in

granting relief to many trust cases in their claim of depreciation. On consideration of the full facts of the present matter and the facts and issues involved in the Hon'ble ITAT's decision, I respectfully beg to moderate my standpoint for the reason given below.

4.10 In the decision in case of Jyothy Charitable Trust, the Hon'ble ITAT has relied upon its earlier decision in case of Cutchi Memon Union (supra). In the latter case, the Hon'ble Tribunal had taken the same argument as in the case of Society of Sisters of St. Anne i.e. depreciation is the only avenue available to a Trust for preserving its corpus. The ITAT observed in para 20 as follows:

“We have considered the rival submissions. If depreciation is not allowed as a necessary deduction for computing income of charitable institutions, then there is no way to preserve the corpus of the trust for deriving the income as it is nothing but a decrease in the value of property through wear, deterioration, or obsolescence. Since income for the purposes of section 11(1) has to be computed in normal commercial manner, the amount of depreciation debited in the books is deductible while computing such income.”

The earlier discussion on the applicability of the decision in case of Society of Sisters of St. Anne will be applicable to the decisions on the depreciation issue by the Hon'ble ITAT, Bangalore. The nuance required in terms of application of this judgement to the facts of a case involving availability of corpus fund is also Similarly to be followed.

4.11 With regard to the decisions of other High Courts it is seen that they have basically followed either the Hon'ble Karnataka High Court decision in case of Sisters of St. Anne (by Madhya Pradesh HC and Punjab & Harayana HC) or the Madras HC in case of Rao Bahadur Calavala Cunnan Chetty Charities (by Calcutta HC) or both (by Gujarat HC). In case of Bombay HC neither of these two decisions has been followed - instead the Hon'ble HC has only cited the Board's Circular of 1968. It may be mentioned that the Madras HC decision is not specifically on the issue of depreciation but only on the broad principle that

"income from properties held under trust would have to be arrived at in the normal commercial manner without reference to the provisions which are attracted by Sec.14."

4.12 The financial statement of the appellant for FY 2011-12 shows that no corpus donation has been received during the year. Hence, the entire claim of deprecation is admissible in terms of the discussion made supra. This ground, therefore, survives."

11. Since the CIT(Appeals) has decided the issue following the judgment of the jurisdictional High Court, we find no infirmity in his order. We therefore confirm the order of the CIT(Appeals).

12. In the result, the appeal of the assessee is allowed and that of the revenue is dismissed.

Pronounced in the open court on this 23<sup>rd</sup> day of March, 2018.

Sd/-

( INTURI RAMA RAO )  
Accountant Member

Sd/-

( SUNIL KUMAR YADAV )  
Judicial Member

Bangalore,  
Dated, the 23<sup>rd</sup> March, 2018.

/ Desai Smurthy /

Copy to:

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

By order

Senior Private Secretary  
ITAT, Bangalore.