

IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'B', BENGALURU

BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A Nos.1639 & 1640/Bang/2018
(Assessment Year : 2009-10 and 2012-13)

Asst. Commissioner of Income-tax (Exemptions),
Circle - 1, Mangaluru .. Appellant

v.

M/s. Sri Jagadguru Murugarajendra Vidyapeeta,
Matada Kurubarahatti,
Chitradurga .. Respondent
PAN : AABAS8314B

Assessee by : Shri. Sandeep C, CA
Revenue by : Ms. Nandini Das, Addl. CIT

Heard on : 18.09.2018
Pronounced on : 28.09.2018

ORDER

PER LALIET KUMAR, JUDICIAL MEMBER :

The present two appeals are filed by the Revenue against the separate orders of the CIT (A), Davangere, dt.20.02.2018, for the assessment years 2009-10 and 2012-13, on the following common grounds of appeal :

- I. Whether on the facts and in the circumstances of the case and in law, the CIT(A) is right in not appreciating 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 exemptions under section 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.
- II. Whether on the facts and in the circumstances of the case and in law, the CIT(A) is right in not appreciating the fact that the issue of application of income more than the income computed does not arise except in a case where the assessee has incurred huge amount of capital expenditure sourced out of borrowed or corpus donations or 15% of income set apart over a period of time? (Expenditure incurred out of the above sources however cannot be termed as application of funds out of the income earned in a particular assessment year in as much as loan borrowed does not fall under the category of income earned by the assessee, corpus fund donations does not come under income by virtue of section 11(1)(d) and 15% of income set apart in earlier assessment year cannot be construed as income of the current year and 15% set apart out of the current year income is also excluded from income available for application. As such, the concept of application is only to show that the income is fully utilised rather than claiming excess expenditure either revenue or capital over and above the income so as to claim excess application or deficit /loss to be carried forward to subsequent assessment years. Even in the case of excess application by virtue of borrowed funds/corpus fund donations 15% set part of earlier years, the income of the assessee cannot be converted to loss but at best it can be made Nil. Hence, the carry forward of excess application of income as claimed by the assessee cannot be allowed).

02. In this regard, the CIT (A) has recorded in para 4a and 4b, as under :

4a. During the course of re-assessment proceedings, the AO recomputed the income of the assessee. The excess application of funds towards the objectives of the trust during the year was recomputed to Rs.9,16,53,198/- and thereby the income of the trust for the AY 2009-10 was NIL. However, carry forward of excess application of funds / depreciation losses to the subsequent assessment year was not allowed as the assessee had availed the benefit of application of funds and claimed exemption u/s 11 of the Act. The AO held that as the income of the assessee is not computed under the head 'Business &

Profession', wherein the Income-tax Act provides for carry forward of deficit/losses/depreciation and therefore, the assessee's claim of exemption u/s 11 is not in accordance with the provisions of Act w.r.t carry forward of deficit. Stating the above, the AO did not consider the objection raised by the assessee and accordingly, did not allow the excess application of funds amounting to Rs.9,16,53,198/- to be carried forward to subsequent assessment years.

4b. During the appellate proceedings, the AR argued against the stand taken by the AO and submits that the application need not be made in the same year as that of the income. It could be that the application of surplus of the earlier years could be claimed as set off for an income of the subsequent year/years. The AR has relied on following judgements in support of his claim.

- a. CIT Vs Maharaja Of Mewar Charitable Foundation (1987) 164 ITR 439 (HC of Rajasthan)*
- b. CIT Vs Shri Plot Swetambar Murti Pujak Jain Mandal (1994) 119 CTR 144 (HC of Guj)*
- c. CIT Vs Instt.of Banking Personnel Selection (2003) 185 CTR 492 (HC of Bombay)*
- d. Sevasadan Orphanage & Training Instt, Bangalore Vs DCIT, C17(2), Bangalore (1TAT "B" Bench, Bengaluru).*

I have perused the decisions relied upon by the AR. The jurisdictional 1TAT, "B" Bench, Bengaluru in the case of Sevasadan Orphanage & Training Instt, Bangalore Vs DCIT, C-17(2) relying on various similar decisions and has held as under:

"It is clear from the rele van portions of the aforesaid decisions of Hon We High Court of Bombay and the co-ordinate bench of the JTA T, Bangalore in the case of Baldwin Methodist Educational Society extracted above that the income of charitable trusts is required to be computed on commercial principles. The concept of application of the income for the year in which the income has arisen is not found in Section 11(1) (a) of the Act. No limitation to the above effect is found in the language of the section. It merely requires application of the income that has arisen from the property held under the trust.

In this view of the matter, the principles relating to set off of losses etc., is not of any relevance and therefore any excess application of income during the year can be regarded as application of the income of future years and can be adjusted. Therefore, in our view, the claim of the assessee for carry forward of excess application is in accordance with the judicial precedents on the issue and the same is allowable.

We, however, find that the co-ordinate benches of the Bangalore Tribunal have consistently followed the view of the Honble Bombay High Court in which the application has been regarded as adjustable against the income of the future years. We are, therefore, inclined to follow the view taken by the coordinate benches of this Tribunal, inter alia, in the case of Baldwin Methodist Education Society, bases on the view/decisions of the Hon 'He Bombay High Court ⁱⁿ the case of Institute of Banking and the Hon We Gujarat High Court in the case of CIT Vs Shri Plot Swetamber Murti Fujakjain Mandal reported in 211 ITR 293. In view of the matter, the AO is directed to allow carry forward of the excess application offor the year to be adjusted from income from property held under the trust of the subsequent years."

Respectfully following the decisions of the jurisdictional ITAT, Bengaluru and the Hon'ble High Courts, I hold that the appellant is entitled to carry forward the excess application of funds for set off in the future assessment years. Thus, the ground succeeds.

03. The Ld. DR vehemently opposed the order of the CIT(A) AND relies on AO order .

04. The Ld.AR brought to our notice that the issue of carry forward of excess application has now been finally settled by the Hon'ble Supreme Court in the matter of CIT v. Rajasthan and Gujarati Charitable Foundation [(2018) 402 ITR 441], wherein, the Hon'ble Supreme Court while answering the question no.2 has held as under:

4. Question No. 2 herein is identical to the question which was raised before the Bombay High Court in the case of Director of Income-tax (Exemption) v. Framjee Cawasjee Institute [\[1993\] 109](#)

CTR 463. In that case, the facts were as follows: The assessee was the Trust. It derived its income from depreciable assets. The assessee took into account depreciation on those assets in computing the income of the Trust. The ITO held that depreciation could not be taken into account because, full capital expenditure had been allowed in the year of acquisition of the assets. The assessee went in appeal before the Assistant Appellate Commissioner. The Appeal was rejected. The Tribunal, however, took the view that when the ITO stated that full expenditure had been allowed in the year of acquisition of the assets, what he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the Trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by the Bombay High Court in the above judgment. Hence, Question No. 2 is covered by the decision of the Bombay High Court in the above Judgment. Consequently, Question No. 2 is answered in the Affirmative i.e., in favour of the assessee and against the Department."

2. After hearing learned counsel for the parties, we are of the opinion that the aforesaid view taken by the Bombay High Court correctly states the principles of law and there is no need to interfere with the same.

3. It may be mentioned that most of the High Courts have taken the aforesaid view with only exception thereto by the High Court of Kerala which has taken a contrary view in 'Lissie Medical Institutions v. CIT [2012] 24 taxmann.com 9/209 Taxman 19 (Mag.)/348 ITR 344 (Ker.)'.

4. It may also be mentioned at this stage that the legislature, realising that there was no specific provision in this behalf in the Income Tax Act, has made amendment in Section 11(6) of the Act vide Finance Act No. 2/2014 which became effective from the Assessment Year 2015-2016. The Delhi High Court has taken the view and rightly so, that the said amendment is prospective in nature.

5. It also follows that once assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.

05. Respectfully following the judgment of the Hon'ble Supreme Court in Rajasthan and Gujarati Charitable Foundation (supra) and after appreciating the facts of the case as above in paras 4a and 4b of the order of the CIT (A), we find that this case is squarely covered in favour of the assessee.

06. In the result, appeals of the Revenue are dismissed.

Order pronounced in the open court on 28th day of September, 2018.

Sd/-

Sd/-

(A. K. GARODIA)
ACCOUNTANT MEMBER

(LALIET KUMAR)
JUDICIAL MEMBER

Bengaluru

Dated : 28.09.2018

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.