

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**
श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A. No.3282/AHD/2014/SRT
निर्धारण वर्ष/Assessment Year : 2010-11

The Deputy Commissioner of Income Tax, Circle-2, Ahmedabad.	Vs.	Shree Surat Jilla Leuva Patidar Samaj Trust, C/o.Sharadbhai D Patel, Afva Via, Vankaner, Tal.Bardoli, Surat – 394 610. [PAN: AABTS 2888 P]
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by	Shri Mitish Modi - CA
राजस्व की ओर से /Revenue by	Shri Sreenivas Bidari - CIT(DR)
सुनवाई की तारीख/ Date of hearing:	15.10.2018
उद्घोषणा की तारीख/Pronouncement on	14.11.2018

आदेश /ORDER

PER O. P. MEENA, ACCOUTANT MEMBER:

1. This appeal filed by the Revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-I, Surat(in short “the CIT (A)”) dated 25.09.2014 pertaining to Assessment Year 2010-11 which in turn has arisen from the order passed by the Assistant Commissioner of Income Tax, Circle-6, Surat(in short “the AO”) dated 19.03.2013 under section 143(3) of Income Tax Act,1961 (in short ‘the Act’).

2. The Revenue has raised following grounds of appeal :

"i) The Ld. Commissioner of Income-Tax (Appeals) has erred in law and on facts in deleting the addition of Rs.7,64,805/- being disallowance of accumulation of income @ 15% of gross total income of Rs.50,98,703/-

ii) The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in deleting the disallowance of amount set apart for specified purpose of Rs.81,16,651/-.

iii) The Ld. Commissioner of Income-Tax (Appeals) has erred in law and on facts in ignoring the stand of the Revenue that allowance of depreciation on the assets, the cost of which has already been allowed as a deduction on account of application of income, would amount to double deduction in view of the decision of the Hon'ble Supreme Court in the case of Escorts Ltd., 199 TIR 43, the decision of Kerala High Court in the case of Lissie Medical institutions Vs. Commissioner of Income-tax, Kochi, 348 ITR 344 and decision of Delhi High Court in the case of DIT(E) Vs. Charanjiv Charitable Trust in (2014) 43 taxmann.com 300 (Delhi).

iv) The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts deleting the disallowance of expenditure of Rs.27,32,9185/- stating that these expenses incurred out of its income accumulated from year to year and not from the earmarked fund.

v) On the facts and circumstances of the case, the Ld. Commissioner of Income-Tax (Appeals) ought to have upheld the order of the Assessing Officer."

3. Ground No.i) relates to making addition of Rs.7,64,805/- on account of alleged accumulation of income @ 15% of the gross total income.

4. The Assessing Officer (AO) was of the view that the assessee has accumulated 15% of gross total income of Rs.50,98,703/-. However, the assessee should have first applied at least 85% of total income towards object of the Trust, then only it could have accumulated 15% of total income u/s.11(1)(a) of the Act. The

assessee has explained that it has received gross receipts of Rs.52,92,614/- against it which has applied the amount of Rs.99,07,454/- towards to object of the Trust. However, the AO noted that there is deficit of Rs.46,14,840/- (i.e. excess of expenditure over income) to be carried forward and set-off in subsequent year, therefore, no question arises of accumulation of 15% of the total income earned by the assessee during the year, hence, the deduction claimed of Rs.7,64,805/- was added to the total income of the assessee.

5. The assessee carried the matter before the CIT(A) wherein same facts were reiterated. The CIT(A) observed that the assessee disclosed income from other sources at Rs.52,92,614/- as against application of income shown at Rs.99,07,454/-. Thus, there is excess of expenditure over income Rs.46,14,840/-. However, the AO has not given any opinion of his revised computation of income though it was in her knowledge during assessment proceedings. Since there remains no income for the purpose of accumulation or setting apart to the expenditure @15%, the provisions of section 11(1)(a) of the Act do not apply in the case of the assessee. It was possible only in the case when the assessee Trust would have applied its income less than 85% of the gross income of the year.

The AO has wrongly drawn the conclusions by ignoring these vital facts in the case of assessee, therefore, the addition made by the AO was deleted.

6. Being aggrieved, the Revenue has filed this appeal. The ld.CIT-DR supported the order of the AO.

7. *Per Contra*, the ld.Counsel relying on the order of the CIT(A) submitted that there was no surplus amount left for accumulation or setting apart during the year, hence, no question arises of making any disallowance.

8. We have heard the rival submissions and perused the material on record, we find that the assessee has already applied its income for the various charitable activities over and above the gross total income earned for the year and for that purpose, aggregated computation of income has been furnished by the written submissions dated 11.03.2013, but the same were not considered by the ld.AO which is not permissible in law. Since, the assessee has already applied its income, therefore no question arises of claiming 15% of deduction or making disallowance of it by the AO. In view of these facts, we hold that ld.CIT(A) has perfectly

deleted the said addition, therefore this ground of appeal is dismissed.

9. Ground No.ii), iii) & iv) are against the deleting the disallowance of amount set apart for specified purposes of Rs.81,16,651/- and disallowance of expenditure of Rs.27,32,915/- which are co-related, hence being considered together.

10. Brief facts are that the AO observed that the assessee had set apart or accumulated the amount of Rs.81,16,651/- u/s.11(2) of the Act but this was not shown to the AO by furnishing Form No.10. The AO, therefore disallowed this amount the same. The AO further observed that the assessee has made expenses of Rs.27,32,915/- from the year marked funds (corpus fund) which is not allowable. The reply of the assessee that said expenditure towards construction of party plot, and no expenditure for construction etc., has been incurred out of its income accumulated year to year no from the corpus fund was not accepted by the AO.

11. Being aggrieved, the assessee filed an appeal before the ld.CIT(A) wherein it was contended that the amount of Rs.81,16,651/- represents the voluntary donations received by the appellant Trust from various donors towards corpus fund for

specific purposes and such donations towards corpus funds are out of the purview of the meaning of the income and therefore not taxable. Similarly, the assessee had filed Form No.10 along with resolution for accumulation of income along with Return of Income filed u/s.139(1) of the Act, therefore no question arises for non-filing of Form Nol.10 separately. Further, the expenditure of Rs.27,32,915/- was incurred out of the accumulated fund, not from the corpus fund as reflected from the balance sheet of the current year as well as earlier years that nothing has been debited out of corpus fund for making any expenditure. In view of these facts the CIT(A) observed that the amount of Rs.81,16,651/- has been received by the appellant Trust towards corpus fund created for the specific purposes by giving nomenclature to building fund tabibi fund, bhajan Sandhya Fund, education fund, social development fund and the life membership fund with the specific directions in writing by all such donors expressing their desires to utilizing the donations towards the corpus of such specific funds of the appellate Trust. Therefore, it is clear from the provision of section 11(1)(d) of the Act that voluntary contributions made towards corpus of the Trust are not to be included in the income of the Trust. Thus, if a donor while making the donations make it

clear that the donation so made shall form part of the corpus of the Trust, it would be capital receipts and shall be chargeable to tax. Consequently, the provisions related to accumulation of income and setting apart of that would not apply in such cases. In view of these facts, the CIT(A) concluded that the judgment relied by the AO in the assessment order become irrelevant to the case of the appellant. With regard to expenditure of Rs.2,73,295/-, the CIT(A) observed that the assessee has demonstrated by filing the ledger account of corpus fund maintained for various years that no expenditure has been debited out of corpus fund during the year. Therefore, the conclusion drawn by the AO was wrong and the disallowance made by the AO was not found sustainable.

12. Being aggrieved, the Revenue has filed this appeal before the Tribunal. The Id.CIT-DR vehemently supported order of the AO.

13. *Per Contra*, the Id.Counsel for the assessee submitted that the donation were received towards corpus fund created for the specific purposes, hence, such voluntary contributions towards corpus of the Trust are not to be included in the income of the Trust as per provisions of section 11(1)(d) of the Act. Similarly, the expenditure of Rs.27,32,915/- has not been made by utilizing

the corpus fund, hence disallowance made by the AO were rightly deleted by the Id.CIT(A).

14. We have considered the rival submissions and perused the material on record. It is noticed from the facts of record that the amount of Rs.81,16,651/- has been received by the assessee Trust towards corpus fund created for the specific purposes, hence, such donation receipts towards corpus fund are to be treated as capital receipts of the Trust and on such donations the provisions of section 11(2) granting exemption to the amount accumulated would not apply. All such funds have been deposited by it as fixed deposit in the bank account and only interest part of it, which has been shown as regular income, has been applied or spent towards various purposes. Therefore, the CIT(A) has rightly deleted such addition made by AO, accordingly ground no.ii) & iii) of the appeal is therefore dismissed. With regard to expenditure of Rs.27,32,915/- we find that these expenditures were incurred out of its income accumulated from year to year and not from earmarked corpus fund the assessee has duly demonstrated by showing the details of the balance sheet of the current year as well as earlier years that no amount has been spent out of the corpus fund received in various years. In view of this matter we

do not any infirmity in the order of CIT(A), accordingly same is upheld, therefore ground no.iv) of appeal of the Revenue is accordingly dismissed.

15. In the result, appeal of the Revenue is dismissed.

16. The order pronounced in the open court on 14-11-2018.

Sd/-

(सी.एम.गर्ग /C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER

Sd/-

(ओ.पी.मीना/O.P.MEENA)

लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

सुरत/ **Surat**, दिनांक **Dated:** 14th November, 2018/S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

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Assistant Registrar, Surat