

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 No.1367/Bang/2018  
(Assessment Year : 2015-16)

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

v.

M/s. T. A. Pai Management Institute,  
Post Box No.9, 80, Badagabettu,  
Manipal .. Respondent  
PAN : AAATT2248R

Assessee by : Shri. M. Sridhar Kamath, CA  
Revenue by : Ms. Neera Malhotra, CIT - DR

Heard on : 27.03.2019  
Pronounced on : 29.03.2019

**ORDER**

**PER LALIET KUMAR, JUDICIAL MEMBER :**

The present appeal is filed by the Revenue against the order of the CIT (A), Mangaluru, dt.12.02.2018, for the assessment year 2015-16.

02. The Revenue has taken up the following grounds of appeal before us :

- 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).

03. At the outset, the Ld. AR submitted that the issue is settled by the judgment of the Hon'ble High Court of Karnataka in ITA No.93 of 2016, dt.30.08.2018, in the matter of CIT v. M/s. Academy of General Education, wherein at para 4, it was held as under :

*4. With regard to carrying forward of the losses for being set off against the income of the charitable trust for the present Assessment Year, the controversy is covered by the judgment in Commissioner of Income tax (Exemptions) and another Vs. Ohio University Christ College rendered on 17.07.2018 in ITA.No.31212016 and ITA No. 31312016, in which the Court held as under:*

*xxxxxxx.....*

*18. In view of the aforesaid findings of the learned Tribunal, allowing any expenditure of the earlier year which has been brought forward and set off in the year*

*under consideration, is a justified finding of fact based on the correct interpretation of law and the judgment relied upon by it rendered by the cognate Bench. Therefore, the same does not call for interference. A similar view was also taken by the Division Bench of Bombay High Court in Commissioner of Income- tax v. Institute of Banking (2003) 264 ITR 110, wherein the Division Bench of Bombay High Court held that the income derived from the trust property has also got to be computed on commercial principles and if commercial principles are applied, then adjustment of expenses incurred by the trust for charitable and religious purposes" in the earlier years against the income earned by the trust in the subsequent year will have to be regarded as application of income of the trust for charitable and religious purposes in the subsequent year.*

xxxx...

*In view of the controversy covered by the above decisions of this Court, we are of the opinion that the substantial question of law as suggested by the appellants does not now arise for our further consideration in the present appeal."*

It was submitted by the Ld. AR that in view of the above, appeal of the Revenue is required to be dismissed.

04. On the other hand the Ld. DR has not disputed the legal position canvassed before us. However, it was submitted that the issue is subject to challenge before the higher authorities.

05. We have heard the rival submissions and perused the material on record. The grounds raised by the Revenue in the appeal is squarely covered against the Revenue. Therefore, following the judgment of the Hon'ble jurisdictional High Court, we dismiss the appeal of the Revenue.

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

Order pronounced in the open court on 29<sup>th</sup> day of March, 2019.

Sd/-

(A. K. GARODIA)  
ACCOUNTANT MEMBER

Sd/-

(LALIET KUMAR)  
JUDICIAL MEMBER

Bengaluru

Dated : 29.03.2019

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

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.