

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. N. S. Saini, Accountant Member

ITA No. 7018/Del/2018 : Asstt. Year : 2015-16

Nemi Chand Jain Educational Society, Flat No. 307, Tower 4, 3 rd Floor, Augusta Town Homes, Entry Between Pavillion Height No. 2 & 3, JP Wish Town Sector-128, Noida-201301	Vs	Income Tax Officer, Ward-2(4), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAATN0172A		

**Assessee by : Sh. K. Sampath, Adv. &
Sh. V. Rajakumar, Adv.
Revenue by : Sh. S. L. Anuragi, Sr. DR**

Date of Hearing: 09.04.2019	Date of Pronouncement: 06.05.2019
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ORDER

This is an appeal filed by the assessee against the order of CIT(A)-40, Delhi dated 30.08.2018.

2. The assessee has raised following grounds of appeal:

"1. That the CIT (Appeals) has erred in upholding addition made by the Assessing Officer of dividend reinvested and not received by the Appellant Trust amounting to Rs.4,77,255.92 and since as per Section 11(7) incomes otherwise exempted u/s 10 are to be included in the total income of the person in receipt thereof, such addition is contrary to the Provisions of Law and may kindly be deleted.

2. That the CIT (Appeals) has erred in ignoring the explicit provisions of Section 11(7) as per which income exempted u/s 10 are taxable only to the extent of their having been received by the Appellant and in wrongly referring to Explanation 1 to Section 11(1) which is not at all applicable in this case.

3. That The CIT (Appeals) has erred in not considering an amended Ground of Appeal submitted by the appellant

during the course of hearing vide letter dated 17th August, 2018 and in not adjudicating there upon.

4. That the order of the CIT (Appeals) and the Assessing Officer in respect to the above grounds are not justified on the facts of the case and are bad in law.

5. The appellant craves leave to add, alter, amend or withdraw any of the Grounds of Appeal."

3. The sole issue involved in the appeal is that the Commissioner of Income Tax (Appeals) erred in upholding addition made by the Assessing Officer of Rs.4,77,255.92 by invoking the provisions of Section 11(7) of the Act.

4. Facts of the case in brief are that during the assessment proceedings, it was noticed that dividend income of Rs.4,91,014/- was received during the year. On being asked to submit a detailed explanation with regard to the same, vide letter dated 31.08.2017, it was submitted that the assessee had received dividend income which was otherwise exempted and should not be included for the purpose of section 11. It was also submitted that it was not required for the charitable purpose. The Assessing Officer, relying on the Provisions of section 11(7) added the dividend income received to the total income. Assessment was completed at an income of Rs.5,87,774/-. Aggrieved by the order, this appeal has been filed.

5. On appeal, the Commissioner of Income Tax (Appeals) observed that in the case under consideration, it is apparent that no option has been exercised in writing either at the time of filing of return of income or during the assessment proceedings for deemed application of the amount of dividend not received since the same was reinvested. Hence, the contention of the appellant that the said income should not be considered as income of the trust in the current year to the extent the income has been reinvested cannot be accepted. However, since the

appellant is eligible for the benefit of exemption under section 11, the Assessing Officer is directed to re-compute the income of the assessee in accordance with the provisions of section 11 and after giving benefit of accumulation to the extent of 15% of the income as per section 11(1)(a). Grounds of appeal nos. 1 and 2 are partly allowed.

6. The Authorized Representative of the assessee argued that according to the computation provisions of Income Tax Act income is not material or relevant for computation of income for charities. For charities, it is the real income which comes in the hands which alone is mandatorily required to be applied towards the charitable objects is subject to statutory set offs. It was submitted that the Hon'ble Andhra Pradesh High Court in the case of COMMISSIONER OF INCOME TAX (APPEALS) Vs Trustees of H.E.H The Nizam's Supplemental Religious Endowment Trust (1981) 127 ITR 378 (AP) observed that with regard to the income of the Trust as such, it was the accounts of the Trust alone which had to be taken into consideration. That meant that statutory computation of income had no relevance. The reliance was placed on the decision of Hon'ble Madras High Court in the case of COMMISSIONER OF INCOME TAX (APPEALS) Vs Rao Bahadur Calavala Cunnan Chetty Charities (1982) 135 ITR 485 (Mad.) where it was observed by the Hon'ble Court that taking into account, the purposes for which the conditions of Section 11(1)(a) of the Act are imposed it will be clear income to be considered will be that which is arrived at in the context of what is available in the hands of the assessee subject to an adjustment of any expenses extraneous to the trust. The reliance was also placed on CBDT Circular No. 5-P(LXX-6) dated 19.06.1968 where it has been stated that the business income of the trust as disclosed by the accounts plus its other income computed as per the Act will be the income of the trust for the purposes of Section 11(1) of the Act. It was submitted that reading the Circular the Hon'ble Calcutta High Court in the case of CIT Vs Jayashree Charity Trust (1986) 159

ITR 280 (Cal.) observed that the word "Income" in Section 11(1)(a) of the Act should be understood in commercial sense. The entire income of the trust in the commercial sense, has been spent for the purpose of charity. The reason to deny the benefit of exemption granted u/s 11 of the Act to that portion of income which has been taken away by deduction at source on the ground that amount has not been spent or accumulated for the purpose of charity. Further, the Hon'ble Kerala High Court in the case of CIT Vs Programme for Community Organization (1997) 228 ITR 620 (Ker.) has held that Board of Revenue has understood that it would be incorrect to assign to the word "income" used u/s 11(1)(a) of the Act, the same meaning as assigned to the expression "total income" in Section 2(45) of the Act. In case of business held under a trust, the income disclosed by the accounts will be eligible for exemption u/s 11(1) of the Act and the permitted accumulation of 25% will also be calculated with reference to this income. Further, the Hon'ble Punjab & Haryana High Court in the case of CIT Vs Market Committee, Sahabad (2016) 70 taxmann.com 230 (P&H) held that where interest accrued to the trust for the year, the application of interest will be worked out taking into consideration that since the accrued interest was never received by the trust. It was disabled from applying anything towards charity. Therefore, it was submitted that the addition of Rs.4,77,256/- should be deleted.

7. The Departmental Representative relied on the orders of the lower authorities.

8. I have heard the rival submissions and perused the orders of the lower authorities and materials available on record. The issue raised before me is that since dividend income of Rs.4,91,014/- earned by the assessee charitable trust was from dividend re-investment plan of mutual fund, the same was not available to the assessee for applying for charitable purposes during the relevant previous year. Therefore,

according to the Id. Authorized Representative the same should not be included in the income of the assessee of the year under consideration.

9. On the other hand, the Id. Departmental Representative supported the order of the Commissioner of Income Tax (Appeals).

10. I find that it is not in dispute that the dividend income in question was actually earned by the assessee during the year under consideration. It is because of the options exercised by the assessee or plan chosen by the assessee of the Mutual Fund by virtue of which the dividend income got re-invested in the Mutual Fund. In other words, the assessee trust chooses to re-invest dividend income in Mutual Fund in place of applying the same for charitable purpose during the year.

11. The Id. Authorized Representative filed before us an application in Form 10 u/s 11(2) of the Act and prayed that benefit of Section 11(2) of the Act should be allowed to the assessee-charitable trust.

12. I find that the said application was not filed before the authorities below. The assessee pointed out that amendment by insertion of Clause (c) in Section 11(2) of the Act was inserted with effect from assessment year 2016-17 which mandates filing of Form 10 within due date prescribed u/s 139(1) of the Act. Thus, the said provision was not applicable for the year under consideration. Hence, the application filed during assessment proceedings can be taken into consideration.

13. Further, it is an established position of law that appeal before the Tribunal is continuation of assessment proceedings. In the circumstances, application in Form 10 furnished now should be taken into consideration. In the circumstances, I set aside the orders of the lower authorities and restore the issue back to the file of the Assessing Officer. The Assessing Officer is directed to verify application made in

Form 10 and thereafter re-compute the income of the assessee as per law.

14. Needless to mention that the Assessing Officer shall allow reasonable opportunity of hearing to the assessee before adjudicating the issue afresh and the assessee is directed to furnish copy of application in Form 10 before the Assessing Officer within 30 days from the date of receipt of order. Thus, the ground of appeal of the assessee is allowed for statistical purposes.

15. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order pronounced in the Court on 6th day of May, 2019 at New Delhi)

Sd/-
(N. S. Saini)
Accountant Member

Dated: 06/05/2019

Subodh

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals)
- 5.DR: ITAT

ASSISTANT REGISTRAR