

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos.160,161 & 737/Bang/2018
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Assessment year : 2008-09 - 2010-11
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The Income-tax Officer (Exemptions), Ward-1, Mangaluru.	Vs.	M/s Medical Relief Society of South Kanara, University Building, Mangaluru-576 104.  PAN – AAAAM 2004P.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	:	Ms. Neera Malhotra, CIT (DR)
Respondent by	:	Smt. Sheetal Borkar, Advocate

Date of hearing	:	08.07.2019
Date of Pronouncement	:	01.10.2019

**ORDER**

*Per B.R Baskaran, Accountant Member*

All these three appeals filed at the instance of Revenue are directed against the orders passed by Ld CIT(A)-10, Bengaluru and they relate to the assessment years 2008-09 to 2010-11. Since common issues are urged in these appeals, they were heard together and are being disposed of by this common order, for the sake of convenience.

2. The assessee herein is a public charitable trust registered u/s 12A of the Act as well as u/s 10(23C)(via) of the Act. The returns of income filed for AY 2008-09 and 2009-10 were processed u/s

143(1) of the Act. The assessment for assessment year 2010-11 was completed u/s 143(3) of the Act on 27-12-2012. The AO noticed that the assessee has claimed “repayment of loans made during the year” as application of income in all the above said three years. The AO noticed that the loan taken by the assessee was not shown as receipts of the trust nor the same is reduced from the operating expenses or capital expenditure. Accordingly the AO took the view that the above said claim of the assessee was wrong and the same has resulted in escapement of income. Accordingly, the AO reopened the assessment of all the three years under consideration.

3. During the course of assessment proceedings of AY 2008-09 and 2010-11, the AO also noticed that the assessee has sold certain capital assets and the surplus arising on the sale of assets has been directly taken to “Capital Fund”. The AO took the view that the Gross sale consideration arising on sale of asset should be assessed as income of the assessee, since the original cost of asset was allowed in the earlier years as application of income.

4. With regard to the claim of “repayment of loan” as application of income, the AO took the view that the same would amount to double deduction, since the original cost of asset (which was purchased by using loan proceeds) was allowed as application of income in the earlier years.

5. Accordingly, the AO completed the assessments by disallowing the claims of “repayment of loan” as application of

income in all the three years and also by assessing the sale consideration arising on sale of capital assets in AY 2008-09 and 2010-11 as income of the assessee.

6. In the appellate proceedings, the Ld CIT(A) directed the AO to allow the claim of repayment of loan as application of income u/s 11 of the Act. With regard to the sale consideration arising on sale of capital assets, the Ld CIT(A) directed the AO to delete the addition made and substitute the same with the figure of capital gains as computed u/s 45 to 55A. For this purpose, the Ld CIT(A) relied upon the decision rendered by the co-ordinate bench in the case of Al-Ameen Educational Society (ITA No.575 (B)/2011).

7. The first issue relates to the claim of repayment of loan as application of income. The Ld D.R submitted that the assessee had already claimed the 'cost of capital assets' purchased out of loan proceeds as "application of income" in the earlier years, when the said assets were purchased. Hence the repayment of loan taken for acquiring very same asset would result in double deduction of same item. He submitted that the various case laws relied upon by Ld CIT(A) would be applicable only in cases, where the cost of capital asset was not allowed as application of income. He submitted that the concept of deduction when the loan was taken for purchasing the asset has been explained by the co-ordinate bench in the case of DCIT vs. M/s Peoples Education Society (ITA No.1074/Bang/2016 dated 09-06-2017). In the above said case, the Tribunal had expressed the view that benefit of exemption u/s 11 cannot be extended to the assets acquired out of borrowed

funds, since borrowed funds is not income in the hands of trust. It was further held that the claim of the assessee for deduction u/s 11 once on acquisition of asset and again on repayment of loan taken would result in double benefit, which cannot be the intention of the statute. Accordingly, the Ld D.R submitted that the Ld CIT(A) was not justified in allowing the claim of the assessee.

8. On the contrary, the Ld A.R submitted that the “repayment of loan” is held to be application of income by Hon'ble Karnataka High Court in the case of CIT vs. Janmabhumi Press Trust (2000)(242 ITR 457).

9. We have heard rival contentions on this issue and perused the record. The assessee is registered u/s 12AA of the Act as well as u/s 10(23C)(vi) of the Act. Hence the assessee is eligible for exemption both u/s 11 and sec. 10(23C)(via) of the Act. From the assessment orders, we notice that the assessee has claimed exemption u/s 10(23C)(via) of the Act in all the three years under consideration.

10. We notice that the third proviso to sec.10(23C)(via) is akin to sec. 11(1) of the Act. The third proviso, referred above, reads as under:-

“Provided also that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via)—

(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent of its income is accumulated on or after the 1<sup>st</sup> day of April, 2002, the period of the accumulation of the amount exceeding fifteen per cent of its income shall in no case exceed five years; and

(b) .....

The provisions of Section 11(1) also requires that the income derived from property held under trust wholly for charitable or religious purposes to the extent to which such income is applied to such purposes in India, and where any such income is accumulated or set apart for application for such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property.

11. It can be noticed that both the third proviso to sec. 10(23C) as well as section 11(1) of the Act allows exemption of “income applied to objects of the trust”. The provisions of sec.11(1) was interpreted by the co-ordinate bench in the case of M/s Peoples Education Society (supra). It is pertinent to note that the Hon'ble Karnataka High Court has held in the case of Janmabhumi Press Trust (supra) that the “repayment of loan” is application of income within the meaning of sec.11(1) of the Act. Hence the co-ordinate bench held as under in the case of M/s Peoples Education Society (supra):-

“19. In our view, Section 11 only contemplates the application of income and if the said income is applied for the

aims and objectives of the trust, then the trust is entitled for exemption under the provision. The said analogy cannot be extended to acquisition of assets from the borrowed funds. If we hold so, then we would be equating the borrowed fund with the income of the trust. Under the law, it is the application of income and not of the fund that is required to be seen for the purpose of granting the exemption. In fact, the assessee would be entitled to exemption in view of the judgement of Hon'ble jurisdictional High Court in the matter of Janmabhoomi Trust (supra), as and when the loan is repaid to the financial institutions. In view thereof, if the claim of the assessee that the borrowed funds were utilized for the objects of the trust, is entertained and accepted at this stage, it would tantamount to double benefit which cannot be the intention of the statute. In view thereof, we find that the CIT(A) erred in allowing the claim for acquisition of capital assets from the borrowed funds....”

12. In the case before the co-ordinate bench, the assessee sought exemption of cost of assets acquired out of borrowed funds. The said claim was rejected on the following reasons:-

- (a) the assets were not acquired out of “income derived from the property held under the trust” and
- (b) the repayment of loan was held to be “application of income” within the meaning of sec.11(1) by Hon'ble Karnataka High Court in the case of Janmabhumi Press Trust (supra).

The ratio of the above said decision is that the assessee would be entitled to deduction only once.

13. The Ld D.R submitted that the claim of the assessee to treat repayment of loan as application of income would result in double exemption of same amount. We find force in the said submissions. We may give an illustration to explain this position.

(a) Let us assume that "Trust A" acquires a property for Rs.10.00 lakhs out of its own income. It shall be claiming exemption of the above said amount of Rs.10.00 lakhs u/s 11(1) of the Act in the year in which the asset was acquired.

(b) Let us take another example. Let us assume that "Trust B" acquires a property for Rs.10.00 lakhs by availing loan of Rs.10.00 lakhs. The assessee may claim exemption as under:-

(i) In the first instance, it will claim exemption of Rs.10.00 lakhs, when the asset was acquired and

(ii) in the second instance, it will claim exemption of Rs.10.00 lakhs, when the loan is repaid.

It can be seen that "Trust B" would be getting exemption twice for the same asset, i.e., once at the time of purchase of asset and again on repayment of loan. As observed by the co-ordinate bench, it could not be intention of the Statute.

14. In the instant appeals, it is the case of the AO that the cost of assets acquired out of loan funds have been claimed by the assessee as application of income in the years in which those assets were acquired. In that case, if the assessee is allowed to claim exemption again on repayment of loan taken for acquiring the very same asset, then the same would result in double exemption for the very same amount, which cannot be the intention of the statute.

Since the assessee has already claimed exemption towards the cost of asset as application of income, in our view, the assessee cannot take support of the decision rendered by Hon'ble Karnataka High Court in the case of Janmabhumi Press Trust (supra) to claim exemption on account of repayment of loan taken for acquiring the above said asset. We notice that the Ld CIT(A) has omitted to consider above said factual aspects and hence we cannot sustain his order passed on this issue. Accordingly, we set aside the order passed by Ld CIT(A) in all the three years on this issue and restore the addition made by the AO in all the three years.

15. The next issue relates to the assessment of sale consideration received on sale of assets. This issue arises in AY 2008-09 and 2010-11. The assessing officer has assessed the entire value of sale consideration received on sale of assets as income of the assessee. The reasoning given by the Assessing officer is that the assessee had claimed entire cost of assets as “application of income” in the earlier years and hence the sale consideration should be taken as income of the assessee. The Ld CIT(A), however, held that the capital gains arising on sale of asset should be assessed in terms of sec.11(1A) of the Act.

16. We heard the parties on this issue. We notice that the provisions of sec.11(1A) of the Act prescribe the procedure for assessment of income arising on transfer of Capital asset held under trust wholly for charitable or religious purposes. The provisions of sec.11(1A) has been explained by the co-ordinate bench in the case of Al-Ameen Educational Society vs.

DCIT(E)(2012)(139 ITD 245)(Bang.). Further, the CBDT has also explained the provisions of sec.11(1A) in Circular No.72 dated 06-01-1972. We notice that the Ld CIT(A) has directed the AO to compute Capital gains arising on sale of capital asset following the decision rendered in the case of Al-Ameen Educational Society (supra). Hence we do not find any reason to interfere with the decision rendered by Ld CIT(A) on this issue.

17. In the result, the appeals of the revenue for AY 2008-09 and 2010-11 are partly allowed and the appeal relating to AY 2009-10 is allowed.

Order pronounced in the Open Court on **1<sup>st</sup> October, 2019.**

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Bangalore,  
Dated, 1<sup>st</sup> October, 2019.

/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation .....
2. Date on which the typed draft is placed  
before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S  
.....
4. Date on which the fair order is placed  
before the dictating Member .....
5. Date on which the fair order comes back to the Sr.  
P.S. ....
6. Date of uploading the order on  
website.....
7. If not uploaded, furnish the reason for doing so  
.....
8. Date on which the file goes to the Bench Clerk  
.....  
Dictation note enclosed
9. Date on which order goes for Xerox &  
endorsement.....
10. Date on which the file goes to the Head Clerk  
.....
11. The date on which the file goes to the Assistant  
Registrar for signature on the order  
.....
12. The date on which the file goes to dispatch section for  
dispatch of the Tribunal Order .....
13. Date of Despatch of Order.  
.....
14. Dictation note enclosed  
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