

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
AND SHRI ARJUN LAL SAINI, ACCOUNTANT MEMBER

(Virtual Hearing)

आ.अ.सं./I.T.A No.3023/AHD/2015

निर्धारण वर्ष/Assessment Year: 2011-12

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| Udhna Academy Education Trust, Central Road No.14, Udhog Nagar Sangh, Udhna, Surat – 394 210. [PAN: AAATU 0431 F] | V s . | The Assistant Commissioner of Income Tax, Circle-2, Surat. |
| अपीलार्थी / Appellant | | प्रत्यर्थी/Respondent |

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| निर्धारितकीओर से /Assessee by | Shri M.K.Patel – AR |
| राजस्वकीओर से /Revenue by | Shri B.K.Panda – Sr.DR |

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| सुनवाई की तारीख/ Date of hearing: | 09.11.2020 |
| उद्घोषणा की तारीख/Pronouncement on: | 09.11.2020 |

आदेश / O R D E R

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the Assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals)-3 [Ld.CIT(A)], Surat dated 10.08.2015, which in turn arise out from the assessment order passed under section 143(3) of the Income-tax Act, 1961 dated 21.03.2014 for the Assessment Year (AY) 2011-12.
2. The assessee raised the following grounds of appeal as under:
 - “(1). *That on facts and in law the learned Commissioner of Income tax (Appeals) has grievously erred in confirming the disallowance of depreciation of Rs.44,59,566/-.*
 - (2) *That the learned CIT(A) has grievously erred in law and on facts in confirming the disallowance of claim under section11(1)(a) of the Act i.e. 15% of the total income before application of expenses.*
 - (3) *The appellant craves leave to add, alter, amend any ground of appeal”*

3. At the outset, for hearing the Learned Authorised Representative (Ld.AR) of the assessee has raised two grounds of appeal, both are covered in favour of the assessee. Ground No.1 which relates to disallowance of depreciation is covered by the decision of Tribunal in assessee's own case for A.Y's. 2005-06 & 2010-11 in ITA No.600 & 601/Ahd/2014 dated 20.09.2016 wherein on identical ground the assessee was allowed similar depreciation. The Ld.AR for assessee further submits that Ground No.2 which relates to disallowance of claim of accumulation being 15% of total gross income is also covered by the decision of Mumbai Tribunal in Lalji Velji Charitable Trust Vs. ITO in ITA No.5322 & 5323/Mum/2016 dated 28.02.2018. The Ld.AR further submits that the Learned Assessing Officer(AO) while making disallowance relied on the decision of Mumbai Tribunal in Dawat Institute of Dawoodi Bohra Community Vs JCIT in ITA No.4309/Mum/2005 dated 30.02.2014, which has been recalled by the Tribunal in M.A.No.237/Mum/2012 order dated 08.03.2013.
4. On the other hand, the Learned Departmental Representative (DR) for the Revenue on Ground No.1 fairly agreed that this ground of appeal is covered. However, on Ground No.2, the Ld. DR submits that accumulation of 15% of income to be allowed subject to the income being available after application be more than 15% or equal. No working of deficit is allowable when not even entire income has been applied. The Ld. DR for the revenue also relied upon the decision of Dawat Institute of Dawoodi Bohra Community (supra).

5. We have considered the submission of both the parties and have gone through order of Lower Authorities. We have noted that on the Ground No.1 in assessee's own case for A.Y. 2005-06 and 2010-11 the assessing officer made similar additions, however on appeal before Ld. CIT(A) the disallowances were deleted. On further appeal before Tribunal the order of Ld. CIT(A) was upheld. The coordinated bench identical issue by following the order in case of Institute of Plasma Research in ITA No.1506/Ahd/2009 dated 21.02.2019, passed the following order:

"6. We have heard both the parties, perused the material placed before us and gone through the orders of the authorities below. Respectfully following the ITAT judgment in the case of Institute of Plasma Research (supra), relying on judgment of Hon'ble jurisdictional High Court in the case of Sheth Manilal Ran Chhoddas Vishram Bhavan Trust (supra) and the amendment u/s 11(6) by Finance Act, 2015 with effect from 01.04.2015, we uphold the order of ld. CIT(A). Thus, both the Revenue's appeals are dismissed."

6. Considering the consistent decision of the Tribunal in assessee's own case on similar fact on identical ground in A.Y. 2005-06 & 2010-11 and respectfully following the same the Ground No.1 of the appeal is allowed.

7. Ground No.2 relates to disallowance of claim under section 11(1)(a) being 15% of total gross income. During the assessment, the AO noted that assessee claimed deduction under section 11(1)(a) of Rs.1.13 crore being 15% of income set apart from specified purpose. The assessee shown total income of the trust at Rs.7.57 crore before claiming expenses on the object of the assessee. On perusal of computation of income, the AO was of the view that method adopted

for computing the deficit is not in accordance with the provisions of the Act. The AO issued show cause notice as to why the claim of 11(1)(a) should not be disallowed. The assessee filed its reply. The Ld.AO has not referred the contents of reply filed by the assessee. The Ld.AO concluded that he had perused the submission of the assessee, it is not acceptable to him. The AO was of the view that computation of deficit which can be carry forward for adjustment against the income of next year is not in accordance with the provision of Law. The assessee has shown total income of the assessee at Rs.7.57 crore and applied amount of Rs.6.45 crore for its object and Rs.44.59 lakhs as depreciation. The assessee is also claiming accumulation of Rs.1.13 crore and deficit is computed at Rs.46.49 lakhs. The deduction under section 11 of the Act is admissible to the assessee only on the balance amount which remains after the expenses incurred on object. The AO of the view if the expenditure of the assessee is deducted from the total income, there will be no balance so as to claim deduction under section 11 of the Act. On appeal before the Ld. CIT(A), the action of AO was confirmed by following the decision of Mumbai Tribunal Dawat Institute of Dawoodi Bohra Community vs. ITO (Supra).

8. Before us, the Ld. AR of the assessee vehemently submitted that this ground of appeal is also covered by the decision of Mumbai Tribunal in Lalji Velji Charitable Trust Vs ITO (supra). It was also submitted that the order in Dawat Institute of Dawoodi Bohra Community

(supra) has been re-called by the Tribunal in M.A.No.237/Mum/2012 dated 08.03.2013.

9. We have noted that in Co-ordinate Bench of Mumbai Tribunal while considering almost identical ground in Lalji Velji Charitable Trust passed the following order :

“6. We are of the view that even though the entire income has been applied on the object of the Trust as application of income and there is no income left to be accumulated rather there is deficit even though assessee is entitled for accumulation or setting apart under section 11(1)(a) of the Act at the rate of 15% of the gross income. We are of the view that exemption available under section 11(1)(a) i.e. 15% of income is invested and not subject to any condition. According to us, there is no bar in law and there is no specific provision in the act which says that such deduction of 15% for accumulation will not be allowed in case of deficit but such 15% accumulation is allowable irrespective of whether 15% of income have been applied or not. Similar is the position in the case of ACIT vs. A.L.N. Rao Charitable Trust (1995) 216 ITR 697 (SC) here the meaning of applied in this context means that the income is actually applied for the charitable or religious purposes of the trust but the word applied need not necessarily imply spent. Even if the income is irretrievably earmarked and allocated for the charitable or religious purposes or purposes it may be under section 11 (1)(a) of the Act. A sum of Rs.66,24,580/- being 15% of the gross income even though the entire income has been applied on the object of the trust as an application of income and there left no income for accumulation. However, as requested by the learned Sr. DR that the facts are not cleared, the same can be verified by the AO but only verification of figures. Accordingly, we set aside the orders of the lower authorities and allow the appeal of the assessee. Consequently, the appeal for AY 2011-12 is exactly identic: and hence, taking a consistent view, we allow this appeal also.”

10. We have further noted that in a recent decision Ahmedabad Tribunal in Gnyan Dham Vapi Charitable Trust vs. DCIT in ITA No.2208/Ahd/2018 on almost identical grounds passed following order :

“8. We have carefully considered the rival submission. The solitary question that arises for adjudication is whether where a trust has incurred shortfall due to its excess spending on the objects of the Trust in a particular year, such deficit or shortfall could be allowed to be carried forward in full for set off

against the incomes generated in the subsequent years or the quantum of carry forward of deficit for set off against income of subsequent years is to be restricted to a recalibrated amount after deduction of 15% of receipts contemplated under section 11(1)(a) and Section 11(1)(b) of the Act.

8.1 Under s. 11 of the Act, income derived from property held under trust wholly for charitable or relates purposes shall not be included in the total income subject to certain conditions. On a combined reading of Section 11(1)(a) and Section 11(2) of the Act, it emerges that the trust is allowed to accumulate 15% of its income without any time limit and balance 85% can be set apart for specified period to five years. In the instant case, the assessee in the assessment year in question as well as in some other assessment years have made spendings in excess of its receipts resulting in certain deficit. Owing to excess spending over receipts, a peculiar situation has arisen in the present case towards the manner of computation of quantum of deficit eligible to be carried forward for set off in subsequent assessment years having regard to statutory permission towards 15% accumulation under s. 11(1)(a)11(1)(b) of the Act without any time limit.

8.2 To delineate on the issue, it may be pertinent to note that in order to be eligible for claiming exemption, it is essential that the income of the trust is applied for charitable objects. A charitable trust or institution is required to apply at least 85% of income derived from trust property towards charitable purposes. If the income spent on charitable or religious purposes during the previous year falls short of 85% of the income derived during the year, such shortfall may be subjected to tax in certain circumstances. Hence, a statutory obligation has been cast on beneficiary trusts to utilize at least 85% of the income derived from the trust property unless accumulated or set apart for application in subsequent years subject to certain stipulated conditions. Section 11(1)(a) & (b) r.w.s. 11(2) of the Act however grants an entitlement to a charitable trust to retain or accumulate 15% of income derived from property held in trust without any time limit and is thus benevolent in nature. In this backdrop, it is noticed that the situation herein is quite opposite. The assessee in the instant case has, in fact, utilized its income for charitable purposes in excess of its receipts without any accumulations resulting in certain 'deficits'. The CIT(A) has applied the governing principles of Section 11 (1)(a) of the Act to a totally converse situation of excess spending rather than accumulation and has brought down the entitlement of deficits carry forward.

8.3 Ostensibly, the assessee has not availed the entitlement of accumulation of 15% of income in the instant case. Needless to say, the statutory postulations towards accumulation of 15% of income for indefinite period is an entitlement or a right of absolute nature vested upon the assessee but, however, cannot be regarded as an obligation envisaged in law. The law applicable to accumulation of income cannot be extended to application thereof. Where an assessee trust has made excess application of its income, the option or entitlement vested upon an assessee to accumulate 15% for indefinite period in our view cannot operate as an obligation enforceable against it in the

absence of accumulation. The method of computation of deficit to be truncated artificially 15% based on an entitlement (opposed to an obligation) as suggested by first appellate authority is totally devoid of any logic. This would tantamount to application of concession conferred on assessee in a reverse manner and thus put the assessee in a worsser position in the event of accelerated application of receipts for salutary purposes. The action directed by CIT(A) has the effect of deprivation of concession granted and is repugnant to the intended outcome. The Pune Bench of Tribunal in Maharshi Karve Stree Shikshan Samsthu Karvenagar vs. ITO 174 ITD 591 (Pune) has also essentially held that relaxations conferred under s. 11 (l)(a)/(b) r.w. Section 11(2) of the Act to the extent of 15% of income would not nullify the entitlement of such absolute nature by way of reduction in quantum of deficit. We thus have no hesitations to quash the observations of the first appellate authority towards exclusion of 15% of income for the purposes of determination of quantum of deficit to be carried forward for set off in ensuing years in accordance with law.

9. In the result, appeal of the assessee is allowed.”

11. Considering the consistent decision of Co-ordinate Bench of Tribunal wherein it was held that there is no bar in law and there is no specific provision in the act which says that such deduction of 15% for accumulation will not be allowed in case of deficit but such 15% accumulation is allowable irrespective of whether 15% of income have been applied or not and respectfully following the same, Ground No.2 of the appeal is also allowed.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 09-11-2020.

Sd/-

(ARJUN LAL SAINI)

(लेखा सदस्य/ACCOUNTANT MEMBER)

Sd/-

(PAWAN SINGH)

(न्यायिक सदस्य/JUDICIAL MEMBER)

सुरत/ **Surat**, दिनांक **Dated:** 9th Nov, 2020 /S.Gangadhara Rao, Sr.PS

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

By order

/ / **TRUE COPY** / /

Assistant Registrar, Surat