IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT), 'C' BENCH MUMBAI

BEFORE SHRI M.BALAGANESH, AM

&

SHRI RAVISH SOOD, JM

ITA No.3408/Mum/2018
(**Assessment Year :2014-15**)

M/s. Iris Knowledge Foundation T-131, Tower 1, 3rd Floor International Info Tech Park Vashi, Navi Mumbai 400 703	Vs.	Director of Income Tax (Exemption), 6th Floor, Piramal Chambers Lalbaug, Mumbai – 400 012
PAN/GIR No. AACCI1544G		
(Appellant)	..	**(Respondent**)

Assessee by	Shri Ronak Doshi
Revenue by	Ms. Shreekala Pardeshi
Date of Hearing	**08/12/2020**
Date of Pronouncement	**10/12/2020**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

This appeal in ITA No.3408/Mum/2018 for A.Y.2014-15 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-1, Mumbai in appeal No.CIT(A)-I/IT/ITO(E)-1(3)/147/2016-17 dated 26/02/2018 (ld. CIT(A) in short) against the order of assessment passed u/s.143(3)of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 25/10/2016

by the ld. Income Tax Officer (E)-1(3), Mumbai hereinafter referred to as ld. AO).

2. The only issue to be decided in this appeal is as to whether the ld. CIT(A) was justified in confirming the action of the ld. AO in denying the claim of the assessee for carry forward of the deficit of excess of expenditure over income in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a Section 25 company under the Companies Act 1956 duly registered with Registrar of Companies, Maharashtra. The assessee is also registered u/s.12A of the Act in the status of public charitable trust. The assessee had filed its return of income on 30/09/2014 for the A.Y.2014-15 declaring total deficit i.e. excess of expenditure over income as per the income tax computation in the sum of Rs.16,00,235/-. The manner of arriving said deficit figure of Rs.16,00,235/- is worked out as under:-

COMPUTATION OF INCOME FOR THE Y.E. 31-03-2014 (A.Y. 2014-2015)

BUSINESS INCOME:	Rs.	Rs.
Donation / Project Income Receivd During the Year		50,39,994
Less : 15% set aside		7,55,999
		42,83,995
Less : Amount incurred for Purpose of Trust	58,75,740	
Total Expenditure		
Less : Depreciation as Companies Act	9,510	
	58,66,230	
Add: Purchase of Assets	18,000	58,84,230
Taxable Income for the year		(16,00,235)
Tax Payable		-
TDS		75,000
Refund Due		75,000

3.1. We find that the ld. AO had completed the assessment u/s.143(3) of the Act dated 25/10/2016 determining total income of Rs. Nil. We find that the ld. AO had observed in the assessment that assessee had furnished the workings of arriving deficit of Rs.8,22,922/- (without considering the 15% deduction towards accumulation) being the excess of expenditure over income and claimed the same to be carried forward to subsequent years. The ld. AO by placing reliance on the decision of Hon'ble Supreme Court in the case of Goetze India Ltd., reported in 284 ITR 323 observed that the assessee cannot make a fresh claim during the course of assessment proceedings without filing revised return and accordingly, restricted the application of income for charitable purposes during the year to the extent of gross income of the assessee of Rs.50,39,994/- as against actual amount applied in the sum of Rs.58,84,230/- and also denied the benefit of exemption u/s.11(1)(a) @15% of the gross income of the trust towards accumulation and completed the assessment. This action of the ld. AO was upheld by the ld. CIT(A).

3.2. We find that the gross income of the assessee during the year in the form of donations was Rs.50,39,994/-. The assessee had actually applied for charitable purposes during the year in the sum of Rs.58,84,230/- as observed by the AO in his assessment order itself. There is absolutely no dispute that assessee is a charitable trust and its activities are purely for charitable purposes only. Hence, there is absolutely no dispute that assessee is entitled for benefit of exemption u/s.11 of the Act. The short point that arises for our consideration are as under:-

a. Whether the assessee is entitled for exemption u/s.11(1)(a) for the 15% of gross income towards accumulation as a standard deduction?
b. Whether the deficit being excess of expenditure over income need to be worked out after reducing the said standard deduction?

We find that the aforesaid issues are no longer res integra in view of the decision of Co-ordinate Bench of Ahmedabad Tribunal in the case of ITO vs. Utthan Sewa Sansthan in ITA No.2017/Ahd/2016 for A.Y.2012-13 dated 24/01/2019 wherein it was held as under:-

> *"5. We have carefully considered the rival submissions. The assessee Trust filed the return of income declaring deficit (excess expenditure incurred over income) to the extent of Rs.1,52,31,341/-. The AO however denied entitlement towards general accumulations to the extent of 15% contemplated under s.11(1)(a) of the Act as the amount applied for the object of Trust (Rs.7,99,18,102) alread y surpassed income derived from property held under trust. The deficit was thus restricted to Rs.38,16,030/- by the AO.*
>
> *6. The relevant facts as presented by the assessee in the statement of facts placed before the CIT(A) are noticed hereunder:*
>
> *"3. The relevant portion of the written submission dated 23-02- 2015 is reproduced below -*
>
> *Further to our earlier written submission dated 30/01/2015 and 20/02/2015, we most respectfully submit the following information / explanations called for during the course of assessment proceedings held on 20/02/2015 -*
>
> *Sir, your honour has sought explanation as to why the general accumulation of 15% u/s 11(1)(a) be not restricted to the extent of income not utilized for the objects of the trust.*
>
> *Sir, in this connection, it is most respect fully submitted -*
> *(i) That the trust has been advised that two independent items are covered in the scope of Section 11 (1)(a)-*
>
> *(a) Actual amount applied for the objects of the trust (Rs.7,99,18,102) and*
> *(b) general accumulation of not more than 15% of th e Income (Rs. 1,14,15,311 being 15% of Rs. 7,61,02,072);*

(ii) That from the plain language of the provisions of section 11(1)(a) it would be clear that : the income that is not to be included for the purpose of computing the total income would be the amount applied for charitable / religious purpose and 15 per cent of the total receipts (net of corpus donation) which is allowed to be carried forward. Accordingly, The assesses is of the view that since the total receipts (net of corpus donation) are Rs.7,61,02,072/-, in accordance with the statutory provisions of section 11(1)(a), 15 per cent thereof is not to be treated as the income of the trust and it is only after deducting such 15 per cent (Rs.1,14,15,311) one has to proceed further to determine the total taxable income and deduct Rs.7,99,18,102/- being the amount applied to charitable / religious purpose. The assessee has, therefore, filed the return of income as per this contention and as per the statement of computation attached with the ITR, the trust has returned an excess expenditure of current year of Rs. 1,52,31,341/-.

(iii) That there is nothing in the language employed in Section 11(1)(a) which restricts the general accumulation u/s 11(1)(a) to a lower amount.

(iv) That the courts (including Hon. Supreme Court) have held that general accumulation of 15% u/s 11(1)(a) is unfettered and not subject to any conditions

(v) That in the assessee's own case, for AY: 2010-11, the Hon. CIT(A) has held that the A.O. was not justified in denying the claim of 15% u/s 11(1)(a);

It is most respectfully submitted that the assessee-trust is a law abiding person engaged in educational activities and would like to adhere to the provisions of the law as elucidated by the available judicial rulings. However, without prejudice to what is stated above, if it were to be interpreted that accumulation u/s 11(1)(a) were to be restricted to the extent of income not utilized for the objects of the trust, then the computation would be as under -

Gross Income including donation to corpus	*7,72,02,072*
Less: Exempted u/s ll(l)(d) • Donation to Corpus	*-11,00,000*
Gross Income after deducting the donation to corpus	*7,61,02,072*
Less: Amount applied for the objects of the trust	
-On Educational Object - Revenue Exp as per I & E A/c (6,90,33,010 Less: Loss on sale of assets Rs. 15,445)	*6,90,17,565*
-On Educational Object - Capital Exp as per Fixed Asset Schedule (Addition Rs. 1,53,80.156 Less Sale Rs.44, 79, 619)	*1,09,00,537 -7, 99,18,102*
	-38,16,030
Less: U/s 11(1)(a): @ 15% of Gross Income of Rs. 7,61,02,072 = Rs. 1,14,15,311 but restricted to..... '	*Nil*
Total Income •	*-38,16,030*

7. As noted earlier, the AO denied the relief claimed under s.11(1)(a) of the Act being 15% of the gross receipt amounting to Rs.1,14,15,311/- and reduced the total deficit to Rs.38,16,030/- against the claim of deficit of Rs.1,52,31,341/-.

8. In the first appeal, the CIT(A) however found merit in the case of assessee and held that the assessee is correctly applied the provisions of Section

11(1)(a) of the Act and the AO was not justified in denying 15% of income out of receipt during the year for accumulation. For the sake of ready reference, the relevant operative paras of the order of the CIT(A) is reproduced hereunder:

> *"4.3 I have carefully considered the contentions of the appellant and the observations of the A.O. It is observed that the A.O has restricted the excess expenditure incurred for the year under consideration (-) Rs.38,16,030/- as against (-) Rs.1,52,31,341/- as declared in the return of income. The appellant is aggrieved by the wrong application of Sec-11(1)(a) of the Act by the A.O. According to appellant the total receipts during the year including the corpus donation is Rs.7,72,02,072/-. Out of this, an amount of Rs.11,00,000/- was received as corpus which is exempted u/s.11(1)(d) of the Act, leaving behind income of Rs.7,61,02,072/-. On this income from the property held under th e trust the appellant claimed 15% for the purpose of accumulation u/s.11(1)(a) of the Act amounting to Rs. 1,14,15,311/-. Out of the remaining amount of Rs. 6,46,86,761/- the appellant had applied Rs.7,99,18,1027- towards the objects of the trust resulting into the deficit of (-) Rs.1,52,31,341/-. In my considered opinion the appellant has correctly applied the provision of sec.11(1)(a)and A.O was not justified in denying 15% of income out of the receipts during the year for accumulation. Thus, the A.O is directed to reduce Rs.1,14,15,311/- as 15% of amount u/s.11(1)(a) of the Act and thereafter reduce the amount applied for the objects of the trust. Thus, ground of appeal No.1 is allowed.*

5. Ground no.2 raised by the appellant is against not allowing the carry forward of excess expenses for set off in the subsequent year by the A.O.

5.1 On this issue the appellant during the appellate proceedings submitted as under :-

> *"The Ground - 2 relates to whether the assesses is entitled to the carry forward of the excess expenses for set off in the subsequent year or not.*
>
> *Your honour, it is the well-settled position that income derived from the trust property has to be determined on commercial principles and if commercial principles for determining the income are applied, it is but natural that the adjustment of the expenses incurred by the trust for charitable and religious purposes in the earlier year against 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 having regard to the benevolent provisions contained in section 11 of the Act and will have to be excluded from the income of the trust under section 11(1)(a) of the Act in that subsequent year. Accordingly, the deficit / negative income determined in year- 1 will be carried forward for set off against the income of the year - 2 and so on. Accordingly, in this case, the appellant is entitled to carry*

forward the negative income determined for AY: 2012-1301 to the subsequent year(s).

The matter is squarely covered by the judgment of the Hon. Madras High Court in the case of CIT v/s Maitriseva Trust [242 ITR 20 (Mad) as well as the judgment of the Hon. Gujarat High Court (jurisdictional High Court) in the case of CIT v. Shri Ploi Swetamber Murti Pujak Jain Mandal [1995] 211 ITR 293 (GUJ.). In this case the Hon. Court was considering the following question -

" Whether, on the facts and in the circumstances of the case, the assessee is entitled to the carry ton-sard of the expenses for set off in the subsequent year?"
The Hon. Court ruled as under -
".....
In view of the above discussion, we are of the opinion that, on the facts and in the circumstances of the case, the assessee is entitled to carry forward expenses for set off in the subsequent year. The question referred to us is, therefore, answered in the
affirmative, i.e., in favour of the assessee and against the Revenue."

The photocopy of the said judgment of Hon. Gujarat HC is attached herewith.
The appellant therefore most humbly prays that this ground of appeal may please be allowed."

5.2 It is observed that the A.O has not allowed the carry forward of deficit of the appellant amounting to Rs. 1,52,31,351/- being the excess application over income and eligible for set off in the future years. The appellant has relied upon the order of jurisdictional High Court in the case of CIT vs Shri Plot Shwetambar Murtipujak Jain Mandal 211 ITR 293(Guj.), CIT vs Maharana of Mewar Charitable Foundation 29 Taxman 476 (Raj) and Govindu Naicker Estate v. Asstt.DIT [2001] 248 ITR 368 (Mad). Hon'ble Gujarat High Court in the case of Shri Plot Shwetambar Murtipujak Jain Mandal has held as follows :-

"A bare perusal of section 11 of the Income-tax Act, 1961, shows 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 is to be excluded for the purposes of computing the income of the trust for the purpose of assessment. There are no words of limitation in this section providing that the income should have been applied for charitable or religious purposes only in the year in which the income had arisen. The word "apply" means "to put to use" or "to turn to use" or "to make use" or "to put t practical use". Having regard the provisions of section 11 of the Act, it is clear that when the income of a trust is used or put to use to meet the expenses incurred for religious or charitable purposes, it is applied for charitable or religious purposes.

The application of the income for charitable or religious purposes takes place in the year in which the income is adjusted to meet the expenses incurred for charitable or religious purposes. In other words, even if expenses for charitable and religious purposes have been incurred for the earlier year and the said expenses are adjusted against the income of a subsequent year, the income of that year can be said to have been applied for charitable and religious purposes in the year in which the expenses incurred for Charitable and religious purposes had been adjusted. There is nothing in the language of section 11(1)(a) of the Act to indicate that the expenditure incurred in the earlier year cannot be met out of the income of the subsequent year and utilization of such income for meeting the expenditure of the earlier year, would not amount to such income being applied for charitable or religious purposes. Income derived from trust property has to be determined on commercial principles and if commercial principles for determining the income are applied, it is but natural that the adjustment of the expenses incurred by the trust for charitable and religious purposes in the earlier year against 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 in which such adjustment has been made having regard to the benevolent provisions contained in section 11 of the Act and will have to be excluded from the income of the trust under section 11(1)(a)."

5.3 I agree with the contention of the appellant as well as the reliance placed on the decision of Jurisdictional Gujarat High Court as above and hereby direct the A.O to allow the benefit of the deficit of earlier years against the future incomes. Accordingly, ground of appeal No.2 is allowed."

9. We find that the identical issue cropped up in assessee's own case in AY 2010-11 as well, wherein no error was found in the action of the CIT(A) for granting accumulation or set apart of income alread y applied in this year to the extent of 15% of the receipt and consequently, the deficit was suitably enhanced. The relevant operative para of the order of the co-ordinate bench in assessee's own case is reproduced hereunder:

"3. With the assistance of the ld. representative, we have gone through the record carefully. The ld. counsel for the assessee has placed on record a copy of the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Programme for Community Organisation, 248 ITR 1 = 166 CR 401 (SC). We find that this decision has silenced the controversy. It is very small decision. It read as under:

1. The questions that were referred to the High Court for consideration, at the instance of the revenue, read thus :

"I. Whether, on the facts and in the circumstances of the case and on an interpretation of the relevant provisions of the Income-tax Act, 1961, the assessee is entitled to exemption at 25 per cent on Rs. 2,57,376 or only on Rs. 87,010 ?

2. Whether, on the facts and in the circumstances of the case, should not the Tribunal have accepted the view of the revenue expressed in the circular, the same being consistent with the relevant provisions of the Income-tax Act, 1961 ?

3. Whether, on the facts and in the circumstances of the case, and also considering the scope of the earlier order of the Commissioner (Appeals) dated 18-11- 1983 the Tribunal is right in law in holding that the Commissioner (Appeals) has rightly interfered with the order of the Income-tax Officer ?"

2. The answers being in favour of the assessee, the revenue is in appeal by special leave.

3. The question that really requires consideration is whether, for the purposes of section 11(1)(a) of the Income-tax Act, 1961 ('the Act'), the amount for the grant of exemption of twenty-five per cent should be the income of the trust or it should be its total income determined for the purposes of assessment to income-tax. This question has to be answered in the light of these facts: the assessee-trust received donations in the aggregate sum of Rs. 2,57,376. It applied thereout for its charitable purposes the aggregate sum of Rs. 1,70,369 leaving a balance of Rs. 87,010. The question is whether the assessee is entitled to accumulate twenty-five per cent of Rs. 2,57,376, as it contends, or twenty- five per cent of Rs. 87,010, as the revenue appeared to contend.

Section 11(1) (a) reads thus :

"11 Income from property held for charitable or religious purposes.-(1)(a) 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 to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of the income from such property;"

4. Having regard to the plain language of the above provision, it is clear that a charitable or religious trust is entitled to accumulated twenty-five percent of income derived from property held under trust. For the present purposes the donations the assessee received, in the sum of Rs. 2,57,376, would constitute its property and it is entitled to accumulate twenty five per cent thereout. It is unclear on what basis the revenue contended that it was entitled to accumulate only twenty-five per cent of Rs. 87,010.

5. For the aforesaid reasons, the civil appeal is dismissed.

6. No order as to costs."

4. In view of the above decision, we do not find any error in the order of the CIT(A). The appeal of the Revenue is dismissed."

10. In parity with the view already taken by the co-ordinate bench in assessee's own case in the earlier assessment year, the CIT(A) was justified in admitting the claim of the assessee for accumulation of income. The CIT(A) has rightly viewed that exemption under s.11(1)(a) of the Act i.e. 15% of the income is unfettered and not subject to any conditions. Hence, we do not see any perceptible reason for our indulgence with the order of the CIT(A). We thus decline to interfere.

11. In the result, appeal of the Revenue is dismissed."

3.3. We also find that similar views were taken by the Co-ordinate Bench of this Tribunal in the case of Lalji Velji Charitable Trust vs. ITO (Exemptions) in ITA Nos. 5322 and 5323/Mum/2016 for A.Yrs 2010-11 & 2011-12 respectively dated 28/02/2018 wherein it was held as under:-

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

₹ 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 identical and hence, taking a consistent view, we allow this appeal also.

3.4. We find that the ld. CIT(A) had heavily relied on the decision of this Tribunal in the case of Dawat Institute of Dawoodi Bohra Community in ITA No.4309/Mum/2005 for A.Y.2001-02 dated 30/04/2013 denying the relief to the assessee. We find that the Co-ordinate Bench of Surat Tribunal in its recent judgment in the case of Udhna Academy Education Trust vs. ACIT in ITA No.3023/Ahd/2015 for A.Y.2011-12 dated 09/11/2020 had observed that the decision relied by the ld. CIT(A) on Mumbai Tribunal order in Dawat Institute of Dawoodi Bohra Community has been recalled by Mumbai Tribunal in MA No.237/Mum/2012 dated 08/03/2013. We find that the Surat Tribunal by placing reliance on the decision of Mumbai Tribunal in the case of Lalji Velji Charitable Trust referred to supra and also on the decision of the Ahmedabad Tribunal in the case of Gnyan Dham Vapi Charitable Trust vs. DCIT in ITA No.2208/Ahd/2014 dated 19/08/2020 reported in 120 Taxmann.com 281 had ultimately held that there is no bar in law and there is no specific provision in the Act which says that deduction of 15% for accumulation will not be allowed in case of deficit to such 15% accumulation is allowable irrespective of whether 15% of income have been applied or not.

3.5. Respectfully following the aforesaid judicial precedents, we uphold the computation of income made by the assessee and allow the grounds of assessee.

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

Order pronounced on 10/12/2020 by way of proper mentioning in the notice board.

Sd/-	**Sd/-**
(RAVISH SOOD)	**(M.BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 10/12/2020
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai