

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE
BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

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| ITA No.696/Bang/2020 |
| Assessment Year : 2017-18 |

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| The Dy. Commissioner of Income-tax (Exemption), Bengaluru. | Vs. | Sri Shridevi Charitable Trust, Shivadeepthi, S.S Puram, Tumkur-572 102. PAN – AADTS 8255 N |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri C Sandeep, C.A |
| Respondent by | : | Shri Rajesh Kumar Jha, CIT (DR) |

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| Date of Hearing | : | 28-12-2020 |
| Date of Pronouncement | : | 12-01-2021 |

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by revenue against order dated 16/09/2020 passed by learnt CIT (A)-14, Bangalore on following grounds of appeal:

“Whether on the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing the claim of the assessee for carry forward of deficit, ignoring the fact that there is no express provisions in the Income tax Act, 1961 allowing such claim, and without appreciating the fact that this would have the effect of granting double benefit to assessee, first as accumulation of income U/s 11(1)(a) or Corpus donation U/s 11(1)(d) in earlier year/current year, or exempt income U/s

10(34), and then as application of income U/s 11(1)(a) in subsequent years which is legally not permissible.?”

Brief facts of the case are as under:

2. Assessee is a charitable trust and it filed its return of income on 27/10/2017. In the said return assessee had claimed total income referred to under section 11 and 12 at Rs.46,69,64, 213/-and claimed deduction under section 11 (1) (a) of the act amounting to Rs.7,00,44,632/-and total application of Rs.66,29,93,259/-thereby seeking carry forward deficit of Rs.26,60,73,678/-for subsequent years. The Ld. AO denied the carry forward deficit to subsequent years to the extent of Rs.26,60,73,678/-.

3. Aggrieved by the order of Ld. AO, assessee preferred appeal before Ld.CIT(A). Ld.CIT while considering the issue alleged by assessee observed and held as under:

“4.2 Disallowance of carry forward of Deficit:

The appellant contented that the AO has erred in not allowing the deficit incurred by the appellant to be carry forward to subsequent years. The appellant relied upon the decision of the jurisdictional hAT judgment in the case of ITO vs. Shraddha Trust (ITA No. 889/Bang/2016) and decision of the CIT(A) in his own case for AY 2013-14. The appellant in his submission dated 29/08/2020 mentioned that the Assessment order was passed u/s 143(3) of the Act for the year under consideration by accepting the returned income of the appellant. Copy of the said order is also submitted. However, the AO failed to mention anything regarding carry forward of the deficit. On this issue the appellant is in this appeal.

4.2.1 The judgement of Hon'ble Karnataka High Court in the case of Pr. Commissioner of Income Tax (Exemption) vs. Manipal Academy of higher Education (2019) 111 Taxmann.com 243; 415 hR 361 (Karnataka) dated 14/08/2019 supports the contention of the appellant. The relevant part of the decision relying of the juggment of CIT(exemption) Vs. Ohio University Christ College (2018) 99 Taxmann.com 377/408 ITR 352 (kar) and the decision of Bomabay High Court in Commissioner of Income Tax Vs. Institute of Banking (2003) 264 ITR 110 is 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 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 this Court held as under:

..."16. in so far as the second question proposed by the Revenue, quoted above is concerned also, we find that the Tribunal's findings in this regard do not give rise to any substantial question of law. The said findings are quoted below for ready reference:

"5.1 In the course of assessment proceedings, the Assessing Officer observed that the assessee had claimed application of income on account of expenditure of earlier years, which has been brought forward and set off in the year under consideration. The Assessing Officer disallowed the same on the ground that there is no express provision in the Act permitting the adjustment of earlier years brought forward expenses as application of income in the current year. According to the Assessing Officer, the application of income for charitable purposes must be during the relevant previous year. Since the income of the trust is exempt from tax, the question of deficit does not arise and also the trust is required to utilize 85% of the income of the previous year for charitable purposes during the year. In this view of the matter and for the above reasons, the Assessing Officer disallowed the assessee's claim of expenditure of earlier years being brought forward and set off during the year.

5.2 On appeal, the learned CIT (Appeals) allowed the amortization of the expenditure as claimed by the assessee and deleted the disallowance made by the Assessing Officer by placing reliance on the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Society of the Sisters of St. Anne reported in 146 ITR 28 (1984) and CBDT Circular No. 5-P(LXX)-6 of 1968.

5.3.1 We have heard the rival contentions of both the learned Departmental Representatives for Revenue and the learned Authorised Representative for the assessee and perused and carefully considered the material on record, including the judicial pronouncements cited. The facts of the issue before us is that the assessee had incurred certain preliminary expenditure in the year of setting up of the trust. The same is amortised by the assessee trust over a period of 5 years from the year of incurring of expenditure. The fact of amortization was not disputed by the Assessing Officer in the assessment proceedings for Assessment Year 2007-08 where the entire amount was added back claiming 115th of the expenditure. The un-amortized expenditure has been brought forward and set off as application of income in subsequent years including the assessment years 2008-09 and 2009-10 which are under consideration.

5.3.2 We find that the issue before us is directly related to the issue decided by the Hon'ble Karnataka High Court in the case of Sisters of St. Anne (supra) cited by the assessee. In the said case, the Hon'ble Karnataka High Court at paras 8 to 10 thereof has held as under. -

5.3.3 Further, the CBDT Circular No.5-P (LXX)-6 of 1968 cited by the assessee makes it clear that income should be understood in its commercial sense . in the case of trusts also and therefore the commercial principle enunciated by the Hon'b/e Karnataka High Court in the above referred case of Sisters of St. Anne (supra) applies to trusts as well. In view of the factual and legal matrix of this issue in the case on hand as discussed above, we concur with the decision of the learned CIT (Appeals) in cancelling the disallowance made by the Assessing Officer and in allowing the amortization of expenses. Consequently, Ground No.B (1 to 6) of the Revenue's appeal for Assessment Year 2008-09 and Ground No.0 for Assessment Year 2009-10 are dismissed."

17. In our opinion, the matter is squarely covered by a decision of the cognate Bench of this Court in the case of CIT vs. Society of the Sisters of St. Anne (1984) 16 Taxman 400 (Kar.) and (1984) 146 1TR 28, wherein the cognate Bench of this Court held that even the depreciation not involving any cash outflow is also in the character of expenditure and therefore such depreciation is nothing but decrease in the value of property through wear and tear, deterioration or obsolescence and the allowance made for that purpose in the books of accounts were deemed to be the application of funds for the purpose of Sec. 11 of the Act. The relevant portion of the said judgment is also quoted below for ready reference:

"11. Mr. Srinivasan, however, urged that there are enough indications in Section 11 to exclude the mercantile system of accounting. The learned counsel relied upon sections 1 1(1)(a) and 11(4) in support of his contention. We do not think that there is anything in these sub-sections to support the contention of Mr. Srinivasan. Explanation to section 1 1(1)(a) on the contrary takes note of the income not received in a particular year. it lends support to the contention of the assessee that account/rig need not only be on cash basis. Section 11(4) is not intended to explain how the accounts of the business undertaking should be maintained. It is intended only to bring to tax the excess income computed under the provisions of the Act in respect of business undertaking.

12. The depreciation if it is not allowed as necessary deduction for computing the income from the charitable institutions, then there is no way to preserve the corpus of the trust for deriving the income. The Board also appears to have understood the 'income' under section 11(1) in its commercial sense. The relevant portion of the Circular No.5XX-6 of 1968, dated 19-6- 1968 (See Taxmann's Direct Taxes Circulars, Vol. 1, 1980 edn. P.85) reads.'

"Where the trust derives income from house property, interest on securities, capital gains, or other sources, the word 'income' should be understood in its commercial sense, i.e., book income, after adding back any appropriations or applications thereof towards the purposes of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted, in this connection, that the amounts so added back will become chargeable to tax under section 11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amounts spent or applied for the purposes of the trust from out of the income, computed in the aforesaid manner, should not be less than 75 per cent of the latter, if the trust is to get the full benefit of the exemption under section 11(1)."

13. *In CIT v. Trustee of H.E.H. The Nizam's Supplemental Religious Endowment Trust (1981) 127 ITR 378, the Andhra Pradesh High Court has accepted the accounts maintained in respect of the trust in conformity with the principles of accountancy for the purposes of determining the income derived from the property held in trust."*

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. The relevant portion of the said judgment of Bombay High Court is also quoted below for ready reference.*

"Normal depreciation can be considered as a legitimate deduction in computing the real income of the assessee on general principles or under section 11(1)(a) of the Income-tax Act, 1961. Income of a charitable trust derived from building, plant and machinery and furniture is liable to be computed in a normal commercial manner although the trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. In all such cases, section 32 of the Act providing for depreciation, for computation of income derived from business or profession is not applicable. However, the income of the trust is required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from the gross income of the trust.

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 in which adjustment had been made having regard to the benevolent provisions contained in section 11 of the Act and such adjustment will have to be excluded from the income of the trust under section 11(1a)."

In view of the controversy covered by the above decisions of this Court, we are of the opinion that the substantial questions of law as suggested by the appellant do not now arise for our further consideration in the present appeal.

The appeal filed by Revenue is accordingly disposed of in terms of the aforesaid judgments of this Court. No costs."

Considering the binding decision of Hon'ble Karnataka High Court, The ground of the assessee on carry forward of deficit is allowed. Ground 2 is allowed."

4. Aggrieved by order of Ld.CIT(A), revenue is in appeal before us now.
5. The issue alleged by revenue is against allowing the claim of assessee for carry forward of deficit.
6. It has been submitted that there is no express provision in the income tax act allowing such claim and Ld. CIT (A) granted double benefit to assessee 1st as accumulation of income or corpus donation in previous year/current year and exemption under section 10 (34) and then as application of income under section 11 (1) (a) of the Act.
7. On the contrary, Ld.AR relied on orders passed by Ld.CIT(A).
8. We have perused submissions advanced by both sides in light of records placed before us.
9. We note that, the issue stands covered by order of Hon'ble Karnataka High Court in case of *CIT vs Ohio University Christ*

College reported in (2018) 99 *Taxmann.com* 377 and decision of *Hon'ble Bombay High Court* in case of *CIT vs Institute of Banking* reported in (2003) 264 *ITR* 110. These decision upholds the carry forward of losses for being set off against income of charitable trust for subsequent assessment years.

10. Further we note that an identical issue has been decided by coordinate bench of this *Tribunal* in case of *ITO vs Shraddha trust* in *ITA No. 899/B/2016*, wherein, it was held that set-off of excess of expenditure incurred over the income of earlier years can be adjusted against income of subsequent years and such adjustment would not be application of income in subsequent years.

11. Based upon the above, we do not find any infirmity in the order passed by Ld.CIT(A) and the same is upheld.

In the result appeal filed by revenue stands dismissed.

Order pronounced in the open court on 12th January, 2021

Sd/-
(B. R. BASKARAN)
Accountant Member
Bangalore,

Dated, the January, 2021.
/Vms/

Sd/-
(BEENA PILLAI)
Judicial Member

Copy to:

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

By order

Assistant Registrar, ITAT, Bangalore

| | | Date | Initial | |
|-----|--------------------------------------------------|-------------|----------------|----------|
| 1. | Draft dictated on | On Dragon | | Sr.PS |
| 2. | Draft placed before author | -1-2021 | | Sr.PS |
| 3. | Draft proposed & placed before the second member | -1-2021 | | JM/AM |
| 4. | Draft discussed approved by Second Member. | -1-2021 | | JM/AM |
| 5. | Approved Draft comes to the Sr.PS/PS | -1-2021 | | Sr.PS/PS |
| 6. | Kept for pronouncement on | -1-2021 | | Sr.PS |
| 7. | Date of uploading the order on Website | -1-2021 | | Sr.PS |
| 8. | If not uploaded, furnish the reason | -- | | Sr.PS |
| 9. | File sent to the Bench Clerk | -1-2021 | | Sr.PS |
| 10. | Date on which file goes to the AR | | | |
| 11. | Date on which file goes to the Head Clerk. | | | |
| 12. | Date of dispatch of Order. | | | |
| 13. | Draft dictation sheets are attached | No | | Sr.PS |