

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.878/Bang/2012
Assessment Year: 2007-08

DDIT, Circle-17(1), Bengaluru.	<b>Vs.</b>	M/s.Cutchi Memon Union, No.62-63, 1 <sup>st</sup> Floor, Chick Bazar Road, Shivajinagar, Bengaluru-560 051. <b>PAN NO : AAATC 4202 A</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Smt. Ilavarasi R, Addl. CIT(DR)(ITAT)
<b>Respondent by</b>	:	Shri. Ashoka Kulkarni, Advocate

<b>Date of Hearing</b>	:	29.03.2021
<b>Date of Pronouncement</b>	:	29.03.2021

**O R D E R**

***Per Chandra Poojari, Accountant Member:***

This appeal is by the Revenue directed against the order of CIT(A) dated 27.04.2012.

2. The Revenue raised the following grounds:

- 1) *The learned CIT (A) ought to have considered the fact that in the case of charitable institutions claiming exemption U/s 11 of the Act, only the provisions of section 11 to section 13 of the Act are only applicable and not other provisions of the Act.*
- 2) *The CIT (A) erred in not appreciating the fact that the income U/s 11 (1) refers to the income from property held under*

*the trust and which has to be applied for charitable purposes. The different heads of income under section 14 of the Income Tax Act are not applicable and hence question of allowance of deduction U/s 24 (a) of the Act does not arise while computing income U/s 11.*

*3) The learned CIT (A) has erred in not following the CBDT Circular in No.5 LXX-6 dated 19.06.1968 wherein it is clarified that the method of computing the income of a charitable trust is different from the computation in case of other assesses. In the case of trust, commercial concept of income has to be considered.*

*4) The decisions relied on by the CIT (A) actually favours the department as the High Courts have categorically held that the income derived from trust property must be determined on commercial principles. In fact the Calcutta High Court in its decisions in 159 ITR 280 and 199 ITR 215 have referred to the CBDT Circular in No.5 LXX-6 dated 19.06.1968 which is favorable to the department.*

3. Originally this appeal was disposed off by this Tribunal wide order dated 14.08.2013 by partially deciding this appeal in favour of the assessee. The Department, vide order in ITA No.534 of 2013, took up the issue before the Hon'ble Karnataka High Court wherein the following questions were framed:

*(i) Whether on the facts and in the circumstances of the case a statutory deduction as provided in Section 24(a) of the Act is not to be reckoned while determining the amount available for application towards charity, for the purpose of levying tax in considering the applicability of Section 11 to a public charitable trust as was done in the assessment order?*

*(ii) Without prejudice and in the alternative whether even in the case of a public charitable trust tax could be levied on a public charitable trust only on its total income computed after taking into account all*

*deductions including those available under Section 24(a) as well as what is to be excluded under Section 11 of the Act?*

4. The Hon'ble High Court remitted the issue back to the file of the Tribunal with following observations:

*"5. We have considered the submissions made by learned counsel for the parties and have perused the record. Before proceeding further, it is apposite to take note of relevant statutory provisions:*

**2(24)** *" income" includes-*

*(i) profits and gains;*

*(ii) dividend;*

*(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (iiiiae) or sub-clause (via) of clause (23C) of section 10 (or by an electoral trust).*

*Explanation. - For the purposes of this sub-clause, "trust" includes any other legal obligation.;*

**2(45)** *" total income" means the total amount of income referred to in carbon computed in <sup>the</sup> manner laid down in this Act;*

**11(1)(a)** *income derived from property held under trust wholly for charitable or religious purpose, 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 [fifteen] percent of the income from such property.*

**24(a)** *a sum equal to thirty per cent of the annual value;*

**139(4A)** *Every person in receipt of income derived from property held under trust or other legal obligation wholly for charitable or religious purposes or in part only for such purposes, or of income being voluntary contributions referred to in sub-clause (iia) of clause (24) of Section 2, shall, if the total income in respect of which he is assessable as a representative assessee. (the total income for this purpose being computed under this Act without giving effect to the provisions of Sections 11 and 12) exceeds the maximum amount which is not chargeable to income- tax, furnish a return of such income of the Previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be, prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-Section (1).*

6. *The object of Section 11 of the Act is to grant immunity to the income of a charitable trust from income tax. The immunity however, is confined to the extent to which such income is applied to such purposes in India. The exemption will be denied if the income is not actually applied for charitable purposes. This exclusion from immunity, which has been granted by Section 11 of the Act has to be confined to the real income of the trust. The application or accumulation can only be of real income which has actually been received by an assessee. It is pertinent to note that Central Board of Direct Taxes has issued a Circular No.5-P dated 19.05.1968, which provides that the word 'income' in Section 11(1a) of the Act must be understood in commercial sense and the entire income of the trust in the commercial sense has been spent for the purpose of charity. The real income of the trust is exempt to the extent to which some income is applied to such purposes in India. The aforesaid view has been taken by Calcutta High Court in JAYASHREE CHARITY TRUST supra as well as GANG, CHARITY TRUST supra with which we respectively agree. However, from perusal of the order passed by the Commissioner of Income Tax (Appeals) as well as the Tribunal, we find that neither the Commissioner of Income Tax (Appeals) nor the Tribunal has examined the case of the assessee on the touchstone of aforesaid well settled legal principles. We are therefore, in the facts of the case left with no option but to quash the order of the Tribunal and remit the matter to the Tribunal afresh for consideration in the light of observations made supra. Since, the*

*matter is being remitted to the Tribunal, therefore, it is not necessary for us to answer the substantial questions of law.”*

5. Hence, this appeal once again came before this Tribunal for adjudication. At the time of hearing, learned AR took a primary objection before the Tribunal that the tax effect in this appeal is less than Rs.50 lakhs and it does not fall under any exception even under CBDT Circular No.3/18 dated 11.07.2018 and this appeal has to be dismissed in limine. The learned DR submitted that this appeal requires to be adjudicated as per the direction of the Hon'ble High Court.

6. We have heard both the parties and perused the material on record. In this case, admittedly, the tax effect involved is less than Rs.50 lakhs. As per CBDT Circular No.3/18 dated 11.07.2018, the Department is precluded from filing the appeal before the Tribunal unless it is covered by any exceptions provided therein. The learned DR is not able to show that this appeal falls under any exceptions provided in that Circular and also admitted that the tax effect involved in this appeal is less than Rs.50 lakhs and the Circular is applicable to all pending matters before Tribunal, High Court and Supreme Court also. It was held in the case of Polyflex (India) Pvt. Ltd., in ITA No.347/2010 dated 02.11.2011 that CBDT's instruction in Circular

No.3/11 dated 09.02.2011 is applicable to pending proceedings also and the Revenue's appeal is not maintainable. Further, in the case of Polyflex ((India) Pvt. Ltd., in ITA No.340/2010 dated 30.07.2018, similar view was taken by the Hon'ble High Court holding that it is also applicable to all pending appeals. Being so, taking a consistent view, we are of the opinion that the tax effect involved in this appeal is less than Rs.50 lakhs and Department appeal is not maintainable. Accordingly, this appeal is dismissed.

7. In the result, Revenue's appeal is dismissed.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(BEENA PILLAI)**  
**Judicial Member**

Sd/-

**(CHANDRA POOJARI)**  
**Accountant Member**

Bangalore,  
Dated : 29.03.2021.  
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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.