

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.695/Bang/2020
Assessment year : 2016-17

ITO (Exemptions), Ward – 1, Bengaluru.	Vs.	M/s. Global City Educational Trust, 135, 135, Ramaiah Garden, Jalakanteshwara Temple Street, 5 th Main, 6 th Cross, Malleshpalya, Bengaluru – 560 075. PAN : AABTG 3599 H
APPELLANT		RESPONDENT

Appellant by	:	Shri. Pradeep Kumar, CIT(DR)(ITAT), Bengaluru.
Respondent by	:	Shri. V. Srinivasan, Advocate

Date of hearing	:	19.07.2021
Date of Pronouncement	:	20.07.2021

ORDER

Per N.V. Vasudevan, Vice President

This is an appeal by the Revenue against the order dated 31.08.2020 of CIT(A), Bengaluru, relating to Assessment Year 2016-17. The grounds raised by the Revenue reads as follows:

1. *On facts and circumstances of the case, the CIT(A) has erred in allowing the claim of the assessee for carry forward of excess of expenditure over income.*
2. *On facts and circumstances of the case, the CIT(A) has erred in ignoring the fact that there is no express provisions in the Income Tax Act, 1961 to allow the carry forward of*

expenditure in case of Trusts registered U/s 12AA of the Income Tax Act, 1961.

3. *On facts and circumstances of the case, the CIT(A) has erred in not appreciating the fact that this would have the effect of granting double benefit to the assessee.*
4. *On facts and circumstances of the case, the CIT(A) has erred in allowing the assessee for accumulation of income U/s 11(1)(a) or Corpus donation U/s 11(1)(d) in earlier years/current year as well as to 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.*
5. *Any other ground that may be submitted before the Hon'ble ITAT.*

2. The assessee is a charitable trust running educational institutions. The assessee trust was granted registration u/s.12A by the Director of Income-tax [Exemptions], Bangalore vide order in No. DIT[E]BLR/12A/G-473/AABTG3599H/ITO[E]-1/Vol.2010-2011 dated 07/01/2011 and the registration granted to the appellant is in force.

3. For the year under appeal, the assessee trust filed its return of income on 14/10/2016 declaring NIL income after claiming application of income u/s.11 of the Act in respect of the revenue expenditure debited to income expenditure account to the extent of Rs. 6,12,83,204/- and the capital expenditure incurred on addition made to fixed assets during the year under appeal of Rs.1,11,43,128/-. That apart, in the computation filed by the assessee along with the return income, the assessee had also claimed application of the excess amounts applied in the earlier years and thereafter sought for carry forward of the excess application over income to the extent of Rs.30,13,95,582/- that was arrived at after setting off certain excess application during the year under appeal.

4. The computation filed by the assessee was as follows: -

[A]	Gross Income as per the Income Et Expenditure Account - [A]	Rs. 8,15,71,721/-
[B]	Minimum required to be applied for Charitable purposes viz 85% as per 11[1][a]	Rs. 6,93,35,963/-
Less: Amounts applied for Charitable Purposes in India		
[a]	Amounts debited to the Income Et Expenditure A/c - other than Depreciation	Rs. 6,12,83,204/-
[b]	Additions to Fixed Assets	Rs. 1,11,43,128/-
[c]	Amount applied for charitable purposes in earlier years in excess of income for those earlier year is claimed in the current year.	<u>Rs. 31 05 40 971/-</u>
	Total Amount of Income applied During the year - [B]	Rs. 38,29,67,303/-

Income applied for Charitable purposes Et its Percentage [C] Rs. 8,15,71,721/-
Income accumulated u/s 11[1][a] Et its percentage-
[D] = [A] minus [C] subject to a Maximum of 15%
Of [A]
Application in excess of income, viz [B] minus [A], which
Requires to be carried forward and treated as
Application in the succeeding years. Rs. 30,13,95,582/-

5. The case of the assessee was taken for scrutiny by issuance of the notices issued u/s. 143[2] and 142[1] of the Act. In course of the assessment proceedings, various details and particulars were called for and examined by the A.O.

6. Thereafter, the A.O. concluded the assessment by order passed u/s.143(3) of the Act, dated 29/11/2018, accepting the NIL income returned by the assessee. However, while assessing the assessee on NIL income, the A.O. has not mentioned anything in the order about the excess application of

the income to the extent of Rs. 30,13,95,582/- claimed by the assessee in the return of income and there is also no discussion on the allowability of the said claim made by the assessee.

7. It was the plea of the assessee before CIT(A) that the claim of the assessee for carry forward of the excess application of income for the year under appeal is allowable having regard to the decision of the Hon'ble ITAT, Bangalore Bench, Bangalore in the case of M/s. JYOTHY CHARITABLE TRUST in ITA 662/Bang/2015 dated 14/08/2015 and hence, the same ought to have been allowed.

8. The CIT(A) agreed with the submissions made by the assessee. In doing so, the CIT(A) followed the decision of the Hon'ble Karnataka High Court rendered in the case of Principal CIT Vs. Manipal Academy of High Education 415 ITR 361 (Karnataka) wherein it was held set-off of excess of expenditure incurred over the income of earlier years against the income of a later year will amount to application of income of such later year and such carry forward should be allowed.

9. Aggrieved by the order of the CIT(A), the Revenue has preferred the present appeal before the Tribunal.

10. The issue that arises for consideration in this appeal which is projected by the Revenue in grounds of appeal, is as to whether the CIT(Appeals) was justified in holding that assessee, a trust, is entitled to carry forward expenditure incurred in excess of its income for setting off against income of the succeeding years?

11. The learned DR reiterated the stand of the AO that there is no provision in the Act to allow carry forward of excess application of income for set off

as application of income in subsequent years. The ld. counsel for the Assessee relied on the order of the CIT(A).

12. We have considered his submission. Section 11(1)(a) does not contain any words of limitation to the effect that the income should have been applied for charitable or religious purpose only in the year in which the income has arisen. The application for charitable purposes as contemplated in section 11(1)(a) takes place in the year in which the income is adjusted to meet the expenses incurred for charitable or religious purposes. Hence, even if the expenses for such purposes have been incurred in the earlier years and the said expenses are adjusted against the income of a subsequent year, the income of such subsequent year can be said to be applied for charitable or religious purposes in the year in which such adjustment takes place. In other words, the set-off of excess of expenditure incurred over the income of earlier years against the income of a later year will amount to application of income of such later year. The above is the position of law as held in the case of CIT Vs. Maharana of Mewar Charitable Foundation 164 ITR 439 (Raj) CIT Vs. Shri Plot Swetamber Murti Pujak Jain Mandal 211 ITR 293 (Guj.). In CIT Vs. Institute of Banking Personnel Selection 264 ITR 110 (Bom) it was held that in case of charitable trust whose income is exempt under s. 11, excess of expenditure in the earlier years can be adjusted against income of subsequent years and such adjustment would be application of income for subsequent years and that depreciation is allowable on the assets the cost of which has been fully allowed as application of income under s. 11 in past years. In Govindu Naicker Estate VS. ADIT 248 ITR 368 (Mad), the Hon'ble Madras High Court held that the income of the trust has to be arrived at having due regard to the commercial principles, that s. 11 is a benevolent provision, and that the expenditure incurred on religious or

charitable purposes in earlier year or years can be adjusted against the income of the subsequent year. The principle that the loss incurred under one head can only be set off against the income from the same head is not of any relevance, if the expenditure incurred was for religious or charitable purposes, and the expenditure adjusted against the income of the trust in a subsequent year, would not amount to an incidence of loss of an earlier year being set off against the profit of a subsequent year. The object of the religious and charitable trust can only be achieved by incurring expenditure and in order to incur that expenditure, the trust should have an income. So long as the expenditure incurred is on religious or charitable purposes, it is the expenditure properly incurred by the trust, and the income from out of which that expenditure is incurred, would not be liable to tax. The expenditure, if incurred in an earlier year is adjusted against the income of a later year, it has to be held that the trust had incurred expenditure on religious and charitable purposes from the income of the subsequent year, even though the actual expenditure was in the earlier years, if in the books of account of the trust such earlier expenditure had been set off against the income of the subsequent year. The expenditure that can be so adjusted can only be expenditure on religious and charitable purposes and no other. The High Court relied on the decision in the case of CIT Vs. Society of Sisters of ST. Anne 146 ITR 28 (Kar.).

13. The Hon'ble Supreme Court in the case of CIT(E) Vs. Subros Education Society (2018) 168 DTR 257 (SC) confirmed the judgment of the Hon'ble Delhi High Court in IT Appeal No.382/2015 dated 23.09.2015 whereby it was held that excess expenditure incurred in earlier year can be allowed to be set off against income of subsequent year under section 11 of the Act.

14. We are therefore of the view that there is no merit in this appeal by the Revenue and accordingly the same is dismissed.

15. In the result, appeal by the Revenue is dismissed.

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

Sd/-
(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated : 20.07.2021.
/NS/*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.