

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

AND

SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.701/Bang/2020
Assessment Year : 2015-16

M/s CR Nagappa and Sons, #16, Kasturba Road, Bengaluru. PAN - AABAS 1764 R	Vs.	The Dy. Commissioner of Income-Tax (CPC), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Sandeep Chalapathy, C.A
Revenue by	:	Shri Kannan Narayanan, JCIT (DR)

Date of Hearing	:	19-07-2021
Date of Pronouncement	:	17-08-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 16/09/2020 by the Ld.CIT(A)-14, Bengaluru for assessment year on following grounds of appeal:

1. That the order passed by the learned Commissioner of Income Tax (Appeals) in so far it is prejudicial to the interests of the appellant, is bad and erroneous in law and against the facts and circumstances of the case.
2. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that there is no mistake apparent from record and therefore, rectification u/s. 154 cannot be made.
3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the appellant has made fresh claim in the application for rectification and therefore, such fresh claim is not allowable.
4. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the appellant has made a fresh claim in the application for rectification even though no such fresh claim was made and only the claim made in the original return of income was rectified.
5. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not allowing the deduction of Rs.72,66,663/- u/s. 11(1)(a) of the Act on the gross receipts on the ground that the claim made in the rectification return is fresh and therefore, such fresh claim cannot be entertained.
6. Without prejudice to the above grounds, that the learned Commissioner of Income-Tax (Appeals) ought to have allowed the correct claim entitled by the appellant following the binding CBDT Circular No. 14 dated 11.04.1955 irrespective of the procedural aspects.

7. That the learned Commissioner of Income Tax (Appeals) ought to have appreciated that the appellant is required to fill the ITR – 7 as per the statutory format and even though the format is not in accordance with statutory provisions and the total income has to be computed only in the accordance with the provisions of the Act.
8. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not allowing 30% deduction of Annual Value even though the claim is not an incorrect claim as defined in clause (a) of explanation below section 143(1) of the Act.

Each of the above ground, is without prejudice to one another, the appellant seeks the leave of the Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify one or any of the grounds of appeal either before or at the time of hearing this appeal.

Brief facts of the case are as under:

2. Assessee is a charitable trust, registered under section 12A of the Act. It filed its return of income on 27/09/2015 declaring total income at 'nil', after claiming deduction under section 11(1)(a) of the act on the surplus. It had declared its income under the income from house property and other sources. The Ld.AO noted that, the assessee claimed deduction of 30% under section 24(b) of the Act under, "income from house property". In the intimation under section 143(1) of the Act, the said deduction was rejected.

2.1 The assessee filed an application under section 154 electronically for rectification. In the rectification application assessee withdrew the deduction claimed under section 24(b) of the Act, but claimed exemption under section 11(1)(a) of the Act, amounting to ₹72,66,63/- being 15% of the gross receipts

towards application of income. The rectification application filed by assessee was rejected on the ground that there is no *prima facie* error in the intimation under section 143 (1).

3 Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

3.1 The Ld.CIT(A) disallowed the exemption claimed under section 11(1)(a) on the gross receipts for the reason that the claim made in the rectification return was fresh which cannot be entertained. The Ld.CIT(A) also upheld disallowance of deduction claimed under income from house property being 30% of the annual let out value.

4 Aggrieved by the order of the Ld.CIT(A) assessee is an appeal before us now.

5. Ground No.1 is submitted to be general in nature and therefore do not require adjudication.

Ground No.3-7

6. It has been submitted that in grounds 3 to 7 the issue that needs to be considered is regarding whether for the purpose of section 11(1)(a) of the Act the amount for grant of exemption would be the net of expenditure or the gross income in the hands of assessee.

6.1 The Ld.AR submitted that assessee in its original return of income computed the exemption under section 11(1)(a) being 15% of the total income. Such total income was computed which included the claim of deduction under section 24(a) being 30% of the rental income. Subsequently, in the revised return filed,

assessee withdrew the claim of standard deduction under “the income from house property” instead the deduction under section 11(1)(a) of the Act was computed on the gross receipts.

6.2 The Ld.AR thus submitted that, assessee in the revised return claimed deduction of ₹72,66,663/- under section 11(1)(a) of the Act, in the application filed under section 154 of the Act, as against the claim of ₹34,42,396/- made in the return of income. He submitted that, the authorities below rejected assessee’s rectification application on the ground that assessee had made fresh claims which cannot be allowed under section 154 of the Act.

6.3 The Ld.AR submitted that, position under law is very clear that deduction under section 11(1)(a) of the Act, is to be allowed on gross receipts. In support he placed reliance on the decision of *Hon'ble Supreme Court* in case of *CIT vs. Programme for Community Organisation* reported in (2001) 248 ITR 1.

6.4 The Ld.AR submitted that, not following the decision of *Hon'ble Supreme Court*, amounts to mistake a print on record and hence it is rectifiable under section 154 of the Act.

6.5 On the contrary, the Ld.DR relied on the orders passed by authorities below.

7. We have perused the vision that was where both sides in the light of the records placed before us.

7.1 Section 11 (1)(a) reads as under:

"11. (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 fifteen per cent, of the income from such property."

7.2 The **Section** relates to the income derived by the trust from property. The trust is required to be wholly for charitable or religious purposes, and the income is expected to have relation to the extent to which such income is applied to such purposes in India.

7.3 The decision of the *Hon'ble Supreme Court* in the case of *CIT vs. Programme for Community Organisation (supra)*, while dealing with identical issue, held that, a charitable or religious trust is entitled to accumulate 25% of its gross income derived from property held under trust.

7.4 At this juncture we refer to the decision of *ITAT Mumbai Special Bench* in the case of *Bai Sonabai Hirji Agiary Trust* reported in *272 ITR (AT) 67* wherein, in identical issue, the *Tribunal* observed as under:-

"From the above, it would appear that the dispute is limited to correct amount of income from house property, whether it should be gross rent of Rs.2,63,675 or the net income after deducting outgoings and depreciation."
..... "Shri V.H. Patil further submitted that the Kerala High Court (see [1997] 228 ITR 620), in the same case, has referred to the Board's Circular dated June 19, 1968, on the same subject and observed that "income" for the purposes of section 11(1), should be understood in its commercial sense. It was held by the Kerala High Court that 25 per cent of gross amount of Rs. 2,57,376 should be accumulated, and this finding has been confirmed by the hon'ble Supreme Court. Shri V. H. Patil also contended that all out-goings including expenditure incurred by a public charitable trust must be considered to be in the nature of application of income for the objects and purposes of the trust. It is, therefore, contended that 25 per cent of the gross income as reflected in the account of the assessee-trust should be allowed to be accumulated under section 11(1)."

*.....
 "Having regard to the clear pronouncement of their Lordships of the Supreme Court it is difficult to accept that outgoings which are in the nature of*

application of income are to be excluded. The income available to the assessee before it was applied is directed to be taken and the same in the present case is Rs. 3,42,174. Twenty-five per cent of the above income is to be allowed as a deduction. Similar view has also been taken by the hon'ble Madhya Pradesh High Court in Parsi Zoroastrian Anjuman Trust Mhow v. CIT [1987] 163 ITR 832. No reason whatsoever has been given by the revenue authorities for deducting Rs. 2,17,126 in this case for purposes of section 11(1)(a). The decision cited on behalf of the Revenue did not take into account the decision of the Supreme Court referred to above. The circular of the Central Board of Direct Taxes has also been considered by the hon'ble Kerala High Court in its decision referred to above. Accordingly, the question referred to us is answered in the affirmative and in favour of the assessee."

7.5 Based on the above view, we are of the opinion that, in the present facts of the case assessee is entitled to accumulate 15% of the gross total income. At this juncture we also know that this claim was not verified by the Ld.AO. Under such circumstances we deem it fit and proper to remand this issue back to the Ld.AO to verify the accumulation of gross income and to consider the claim of assessee in accordance with the ratios laid down by Hon'ble Supreme Court in the case of *CIT vs. Programme for Community Organisation (supra)*, and the decision by *ITAT Mumbai Special Bench (supra)* .

Accordingly these Grounds raised by assessee is allowed for statistical purposes.

The result appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 17th August, 2021

Sd/-

(CHANDRA POOJARI)
Accountant Member
Bangalore,
Dated, the 17th Aug, 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	-8-2021		Sr.PS
3.	Draft proposed & placed before the second member	-8-2021		JM/AM
4.	Draft discussed/approved by Second Member.	-8-2021		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-8-2021		Sr.PS/PS
6.	Kept for pronouncement on	-8-2021		Sr.PS
7.	Date of uploading the order on Website	-8-2021		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-8-2021		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