

**आयकर अपीलीय अधिकरण “D” न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
BEFORE SRI MAHAVIR SINGH, VP AND SRI MANOJ KUMAR AGGARWAL, AM

**आयकर अपील सं./ ITA No. 781/Mum/2019**  
(निर्धारण वर्ष / Assessment Year 2014-15)

Rustomjee Kerawalla Foundation 3 <sup>rd</sup> Floor, Kerawalla Chambers, 25, P.J. Ramchandani marg, Colaba, Appolo Bunder, Mumbai-400 039	Vs.	The Dy. Commissioner of Income Tax, Circle-2(1) Room No.519, 5 <sup>th</sup> Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400 012
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAATR3480R</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Satish Mody, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri Bharat Andhle, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	10.08.2021
घोषणा की तारीख / <b>Date of pronouncement :</b>	<b>31.08.2021</b>

**आदेश / ORDER**

**महावीर सिंह, उपाध्यक्ष के द्वारा /**  
**PER MAHAVIR SINGH, VP:**

This appeal of assessee is arising out of the order of Commissioner of Income Tax (Appeals)-1, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-1/176/DCIT(E)-2(1)/2016-17 vide order dated 20.11.2018. The Assessment was framed by the Asst. Commissioner of Income Tax (Exemption), Circle-2(1), Mumbai (in short 'DCIT/ AO') for the A.Y. 2014-15 vide order dated 28.09.2016 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the Assessing Officer in not



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allowing deduction at the rate of 15% under section 11(1)(a) of the Act. For this, assessee has raised the following ground: -

*“1. The learned Commissioner of Income-tax (Appeals)-1, Mumbai, has erred in confirming the order of DCIT (E)-2(1), Mumbai and not allowing deduction of 15% of the income u/s 11(1)(a) of the Act.”*

3. Brief and admitted facts are that as per computation of the assessee it has shown total receipt of ₹57,20,20,936/- as against the sum of total application of funds was ₹56,98,78,852/- and thereby there is surplus of ₹21,42,084/-. The Assessing Officer was of the view that even after adjustment of receipts and expenditure as per commercial principles, the accumulation under section 11(1)(a) of the Act would be the surplus amount worked out on the commercial principle being capped at maximum of 15% of the gross receipts of the assessee's Trust. Accordingly, the Assessing Officer was of the view that the assessee is allowed to accumulate only to the extent of the surplus available. Therefore, the assessee is not allowed to claim deduction on more or to claim less or to carry forward the same for future set off. The CIT(A) was of the view that accumulation of 15% claimed by assessee as deduction for working out the deficit is allowable subject to availability of surplus fund. According to CIT(A), the same is not available hence, the action of the Assessing Officer is in conformity with the provisions of section 11 of the Act. Thereby, he confirmed the action of the Assessing Officer and rejected the claim made by assessee's Trust for carry forward of the said deposit of ₹2.78 crores.

4. We noted the fact that during the year under consideration, the assessee's Trust had received gross receipt amounting to ₹



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10.35 crores and had incurred a sum of ₹11.58 crores for the purpose of the Trust. The assessee has claimed 15% of gross receipts as deduction under section 11(1)(a) of the Act claiming amount of ₹1.55 crores. Aggrieved, against the action of the CIT(A) not allowing the claim of deduction and confirming the action of the AO, assessee came in appeal before Tribunal.

5. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee's Trust has claimed deduction at the rate of 15% of the gross receipts of ₹57,20,20,936/- which amounts come to ₹8,58,03,140/- liable as per section 11(1)(a) of the Act. The assessee's Trust has spent of ₹56,98,78,852/- which is more than 85% of the income and there is no surplus. We noted that this issue is covered by various decisions of this Tribunal and lower authorities have misinterpreted the applicability of Section 11(1)(a) of the Act, which is contradictory to the law, where 85% of the income of the Trust is to be applied or expended for the charitable purposes. Thus, from gross income 15% of income is to be deducted. Similarly, more than 85% of the income of the Trust is applied on the object of the Trust and statutory allowances is to the extent of available surplus because it clearly states that 85% of the income of the Trust is to be applied or expended for the charitable purposes and that mean from the gross income at the rate of 15% of the income is to be deducted, which is statutory allowances. This issue is squarely covered in various decisions of this Tribunal in case of Lalji Velji Charitable Trust Vs. ITO in ITA No. 5322/Mum/2016 & 5323/Mum/2016 for Assessment Year 2010-11 and 2011-12 vide order dated 28.02.2018, wherein it is held in Para 6 as under: -



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*“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.”*



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6. Respectfully following the Tribunal decision in the case of Lalji Velji Charitable Trust (*supra*), we reverse the orders of the lower authorities and allow the claim of the assessee.

7. As regards to the second ground of appeal of the assessee which is excess of expenditure over income of ₹8,36,61,056/-, which is allowed to be carried forward and to be set off against income of subsequent years. Since, we have already allowed the claim of assessee, this being a consequential claim, we allow this also.

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

Order pronounced in the open court on 31.08.2021.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)  
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)  
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 31.08.2021.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai