

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

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

ITA No.708/Bang/2020
Assessment Year: 2014-15

Deputy Commissioner of Income-tax (Exemptions) Circle-1 Bengaluru	<b>Vs.</b>	M/s. Green Wood High Trust, No.377, Sarjapur Road Koramangala Bengaluru  <b>PAN NO :AAATG6125A</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Dr. Manjunath Karkihalli, D.R.
<b>Respondent by</b>	:	Shri B.R. Sudheendra, A.R.

Date of Hearing	:	25.10.2021
Date of Pronouncement	:	25.10.2021

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The revenue has filed this appeal challenging the order dated 22.9.2020 passed by Ld. CIT(A)-14, Bengaluru and it relates to the assessment year 2014-15. The revenue is aggrieved by the decision of Ld. CIT(A) in holding that the brought forward deficit amount should be allowed as application.

2. The assessee is a Charitable Trust and it was granted registration u/s 12A of the Income-tax Act,1961 ['the Act' for short] on 24.11.2011 by Ld. DIT (Exemptions). The Ld. A.R. submitted that the assessee had applied money for charitable purposes in

excess of income generated in the years relevant to assessment years 2012-13 & 2013-14. The amount so spent in excess aggregated to Rs.5.35 crores. The assessee claimed the above said brought forward deficit amount as application of income during the year under consideration. The A.O. rejected the claim without discussing on this issue in the assessment order. The Ld. A.R. submitted that the assessee contested this issue before Ld. CIT(A) and the first appellate authority has allowed the claim of the assessee by following the decision rendered by Hon'ble Karnataka High Court in the case of CIT Vs. Manipal Academy of Higher Education 415 ITR 361.

3. The Ld. A.R. further submitted that an identical issue has been examined by jurisdictional High Court of Karnataka in the assessee's own case in ITA No.231 of 2018 relating to AY 2012-13 and the Hon'ble High Court, vide its order dated 14.8.2018, allowed an identical claim of the assessee. Accordingly, he prayed that the order passed by Ld. CIT(A) does not call for any interference.

4. Ld. D.R., on the contrary, supported the order passed by the A.O.

5. We heard the rival contentions and perused the record. We notice that an identical issue has been examined in the assessee's own case by Hon'ble jurisdictional High Court of Karnataka (referred supra). Accordingly, we extract below relevant portion of the order passed by Ld CIT(A):-

*"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 is 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.312/2016 and ITA No.313/2016, 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 1/5th 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.*

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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 : -

Xxxxxxx .....

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'ble 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.C 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 ITR 28, wherein the coordinate 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 11\(1\)\(a\)](#) 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 11\(1\)\(a\)](#) on the contrary takes note of the income not received in a particular year. It lends support to the contention of the assessee that accounting 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\(1\)\(a\)](#)."*

*In view of the controversy covered by the above decisions of this Court, we are of the opinion that the substantial question of law as suggested by the appellants does not now arise for our further consideration in the present appeal."*

We notice that the Ld CIT(A) has followed the binding decision rendered by Hon'ble jurisdictional Karnataka High Court and further the jurisdictional High Court has decided an identical issue in assessee's favour in the assessee's own case. Accordingly, we do not find any reason to interfere with the order passed by Ld CIT(A) on this issue.

6. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 25<sup>th</sup> Oct, 2021.

**Sd/-**

**(N.V. Vasudevan)**  
**Vice President**

**Sd/-**

**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 25<sup>th</sup> Oct, 2021.  
VG/SPS

**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.