

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

**ITA No.2468/Del/2018
Assessment Year: 2014-15**

ITO(E) Ward- 2 (2) New Delhi	Vs.	Shri Swami Satyanand Dharmarth Trust, 8A, Ring Road, Lajpat Nagar-IV, New Delhi
		PAN No. AAATS2626J
(Appellant)		(Respondent)

Appellant by	Sh. Sumit Kumar Varma, Sr. DR
Respondent by	Sh. Ruchesh Sinha, Advocate Ms. Mansie Jain, Advocate

Date of hearing	21.10.2021
Date of pronouncement	02.12.2021

ORDER

PER O.P. KANT, AM:

This appeal by the Revenue is directed against order dated 18/01/2018 passed by the Learned CIT(Appeals)-40, Delhi [in short

the Ld. CIT(A)] for assessment year 2014-15, raising following grounds:

1. *On the facts and in the circumstances of the case and in law, whether the Ld. CIT (A) has erred in law in allowing the assessee's claim of carry forward of current year's loss and set-off of excess deficit pertaining to earlier years without appreciating the fact that the scheme of taxation of charitable or religious trust/institution as codified u/s 11, 12 and 13 there is no provision for computing loss from property held under trust/institution on account of excess application of income/funds of the trust.*
2. *On the facts and in the circumstances of the case and in law, whether the Ld. CIT (A) has erred in law in allowing the assessee's claim of carry forward of current year's loss and set off of excess deficit pertaining to earlier years without appreciating the fact that the normal computation of income under respective heads as envisaged u/s 15 to 59 are not applicable to the computation of income in respect of charitable trust/institution for the purpose of claiming exemption under section 11, 12 and 13 and therefore the provisions relating to set off of loss from one source against the income from another source, set off of loss from one head against income from another head and carry forward and set off of loss against the income of subsequent years as envisaged u/s 70 to 79 are also not applicable to the charitable trusts/institutions.*
3. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.*

2. Briefly stated facts of the case are that the assessee is a religious trust and registered under section 12A of the Income Tax Act, 1961 (in short 'the Act') vide registration dated 05/07/1975. The assessee was engaged in publication of books and printings of religious books written by Sh. Swami Satyanandji , which are sold at a small profit through shops, agencies and other books dealers etc. The assessee filed return of income for the year under consideration on 30/09/2014 declaring nil income. The return of income filed by the assessee was scrutinised and the scrutiny assessment under section 143(3) of the Act was completed on 19/10/2016, wherein excess application of income claimed by the assessee was disallowed to be carried forward and claim of depreciation on fixed assets was denied to the assessee. On further appeal, the Ld. CIT(A) allowed excess application brought forward from earlier years as well as claim of depreciation of the assessee. Aggrieved, the Revenue is in appeal before the Tribunal, raising the grounds as reproduced above.

3. Before us, the parties appeared through videoconferencing facility.

4. Before us the Learned DR relied on the order of the Assessing Officer and submitted that application of the income has to be allowed under the provisions from section 11 to 13 of the Act, and not on the basis of the other provisions of the Act, which are not applicable in the case of the assessee. Similarly, in case of the depreciation also the Learned DR submitted that application of the

investment in assets has already been allowed to the assessee in earlier year and therefore further allowing the depreciation as application of the income in the year under consideration would amount to double deduction, which is not permitted in law.

5. The Learned Counsel of the assessee on the other hand submitted that the ground No. one of the appeal is covered in favour of the assessee by the order of the Coordinate Bench of the Tribunal in assessment year 2013-14. Regarding the ground No. 2, the learned Counsel submitted that issue in dispute is covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of Rajasthan and Gujarat the charitable foundation Poona (supra) and the amendment in Act for restricting allowance of depreciation in case of trust etc is effective from 01/04/2015 i.e. assessment year 2015-16, whereas assessment year involved in present appeal being assessment year 2014-15, said amendment is not applicable in the case of the assessee.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. As far as ground No.1 of the appeal is concerned, we find that identical issue in dispute has been allowed in favour of the assessee by the Tribunal in ITA No. 6287/del/2017 for assessment year 2013-14 observing as under :

“9. After considering the facts and submissions and referring to various judicial decisions, the ld. CIT(A), in

particular, relied upon the decision of the Hon'ble Jurisdictional High Court in the case of DIT Vs. Raghuvanshi Charitable Trust 197 Taxmann.com 170. The following observations of the Hon'ble High Court were relied upon:

“8. It would be fruitful to refer to the discussions contained in Institute of Banking (supra), Per. Hon'ble Mr. Justice S.H. Kapadia, which is advanced before us by the learned counsel for the Revenue to repel the same in the following words:

"Now coming to question No.3, the point which arises for consideration is: whether excess of expenditure in the earlier years can be adjusted against the income of the subsequent year and whether such adjustment should be treated as application of income in the subsequent year for charitable purposes? It was argued on behalf of the Department that expenditure incurred in the earlier years cannot be met out of the income of the subsequent year and that utilization of such income for meeting the expenditure of earlier years would not amount to application of income for charitable or religious purposes. In the present case, the Assessing Officer did not allow carry forward of the excess of expenditure to be set off against the surplus of the subsequent years on the ground that in the case of a charitable trust, their income was assessable

under self-contained code mentioned in [section 11](#) to [section 13](#) of the Income-tax Act and that the income of the charitable trust was not assessable under the head "Profits and gains of business" under [section 28](#) in which the provision for carry forward of losses was relevant. That, in the case of a charitable trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of the subsequent years. We do not find any merit in this argument of the Department. 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 has been made having regard to the benevolent provisions contained in the [section 11](#) of the Act and that such adjustment will have to be excluded from the income of the trust under [section 11\(1\)\(a\)](#) of the Act. Our view is also supported by the judgment of the Gujarat High Court in the case of [CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal](#) [1995] 211 ITR 293. Accordingly, we answer question No.3 in the affirmative, i.e., in favour of the assessee and against the Department."

9. It is clear from the above that as many as five High Courts have interpreted the provision in an identical and similar

manner. Learned counsel for the Revenue could not show any judgment where any other High Court has taken contrary view. Since we are in agreement with the view taken by the aforesaid High Court, we answer these questions in favour of the assessee and against the Revenue.

10. Before we part with, we may point out that learned counsel for the assessee in ITA No.589/2008 and ITA No.25/2009 submitted that the questions involves in these two appeals are purely academic. In these cases even in the current year, more than 75% / 85% (as the case may be) of the income was applied for charitable purpose and therefore, no set off was required to be claimed. Further, it is not necessary to go into this issue once we have decided the question of law in favour of the assessee.”

10. Since the first appellate authority has rightly followed the binding precedent of the Hon'ble High Court of Delhi [supra], we do not find any reason to interfere with the findings of the ld. CIT(A).

7. Further we find that, the Ld. CIT(A) in the year under consideration has allowed the ground of the assessee observing as under:

“4.2.1 The Assessing Officer has not allowed the claim of carry forward of deficit in respect of excess application since there are no provisions for carry forward of deficit under sections 11 and 12. The appellant has relied upon the decision of the Hon'ble Delhi High Court in the case of DIT Vs. Raghuvanshi Charitable Trust [(2011) 197 Taxman 170 (Delhi)]. Reliance has also been placed on the decision of Id. CIT(A) for assessment years 2006-07 and 2008-09 where excess application brought forward for earlier years has been allowed.

4.2.2 I have considered the assessment order and the submissions of the appellant. Charitable trusts or institutions are governed by the provisions of sections 11, 12, 12A, 12AA and 13 under Chapter III of the Income-tax Act. These sections constitute a complete code governing the grant, cancellation or withdrawal of registration, providing exemption of income and also conditions subject to which a charitable trust or institution is required to function in order to be eligible for exemption. In these sections, there is no provision for adjustment of brought forward loss or carry forward of loss of current year to be adjusted against the income of subsequent year. However, various Hon'ble High Court have taken a view that income is to be computed in accordance with commercial principles and as such adjustment of brought forward loss/deficit and carry forward loss/ deficit is to be allowed. A few of such decisions are as under:

i.CIT vs. Maharana of Mewar Charitable Foundation, 164 ITR 439 (Raj)1987.

ii. *CIT vs. Shri Plot SwetamaberMurtiPujak Jain Mandal*, 211 ITR 293 (Guj) 1995.

iii. *CIT vs. Matrisewa, Trust*, 242 ITR 20 (Mad) 2000

iv. *Govindu Naicker Estate vs. ADIT*, 248 ITR 110 (Bom) 2003.

v. *CIT vs. Institute of Banking*, 264 ITR 110 (Bom) 2003.

vi. *DIT vs. Raghuvanshi Charitable Trust*, 197 Taxman 170 (Delhi) 2011

4.2.3 In the case of *DIT vs. Raghuvanshi Charitable Trust* (supra), the Hon'ble Delhi High court have held as under:

"8. It would be fruitful to refer to the discussions contained in *Institute of Banking Personnel Selection (IBPS)'s case* (supra), Per Hon'ble Mr. Justice S.H. Kapadia, which is advanced before us by the learned counsel for the revenue to repel the same in the following words :

"Now coming to question No. 3, the point which arises for consideration is : whether excess of expenditure in the earlier years can be adjusted against the income of the subsequent year and whether such adjustment should be treated as application of income in the subsequent year for charitable purposes? It was. argued on behalf of the Department that expenditure incurred in the earlier years cannot be met out of the income of the subsequent year and that utilization of such income for meeting the expenditure of earlier years would not amount to application of income for charitable or religious purposes. In the present case, the Assessing Officer did not allow carry forward of tire excess of expenditure to be set off

against the surplus of the subsequent years on the ground that in the case of a charitable trust, their income was assessable under self-contained code mentioned in section 11 to section 13 of the Income-tax Act and that the income of the charitable trust was not assessable under the head "Profits and gains of business" under section 28 in which the provision for carry forward of losses was relevant. That, in the case of a charitable trust, there was no provision for carry forward of the excess of expenditure of earlier years to be adjusted against income of the subsequent years. We do not find any merit in this argument of the Department. 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 has been made having regard to the benevolent provisions contained in the section 11 of the Act and that such adjustment will have to be excluded from the income of the trust under section 11(1)(a) of the Act. Our view is also supported by the judgment of the Gujarat High Court in the case of CTT v. Shri Plot SivetamberMurtiPujak Jain Mandal [1995] 211 ITR 293 . Accordingly; we answer question No. 3 in the affirmative, i.e., in favour of the assessee and against the Department."

9. It is clear from the above that as many as five High Courts have interpreted the provision in an identical and similar

manner. Learned counsel for the revenue could not show any judgment where any other High Court has taken contrary view. Since we are in agreement with the view taken by the aforesaid High Court, we answer these questions in favour of the assessee and against the revenue.

10. Before we part with, we may point out that learned counsel for the assessee in ITA No. 589/2008 and ITA No. 25/2009 submitted that the questions involves in these two appeals are purely academic. In these cases even in the current year, more than 75 per cent/85 per cent (as the case may be) of the income was applied for charitable purpose and therefore, no set off was required to be claimed. Further, it is not necessary to go into this issue once we have decided the question of law in favour of the assessee."

4.2.4 In view of the discussion above and relying on the decision of the Hon'ble Delhi High Court in the case of DIT vs. Raghuvanshi Charitable Trust (supra), the Assessing Officer is directed to allow the set off of carried forward deficit. Grounds of appeal nos. 2,3 and 5 are allowed.

8. Thus, we find that, the Ld. CIT(A) in the year under consideration as well as the Tribunal in assessment year 2013-14 has allowed the ground of the assessee relying on the precedent of jurisdictional High Court. In view of the above, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we dismiss the ground No.1 of the appeal.

9. As far as ground No. two is concerned, we find that the Ld. CIT(A) has deleted the addition observing as under:

4.3.2 I have considered the order of the Assessing Officer and the submissions of the appellant. Charitable trusts or institutions are governed by the provisions of sections 11, 12, 12A, 12AA and 13 under Chapter III of the Income-tax Act. These sections constitute a complete code governing the grant, cancellation or withdrawal of registration, providing exemption of income and also conditions subject to which a charitable trust or institution is "required to function in order to be eligible for exemption. Section 11(1)(a) provides for exemption to the extent income derived from the property held under trust is applied for charitable purposes. Subject to fulfillment of conditions laid down in section 11, exemption is available in respect of income irrespective of whether the expenditure incurred is revenue or capital in nature. Hence, exemption is available even when the income is applied for acquiring a capital asset. In view of this, charitable institutions were not eligible for depreciation.

4.3.3 This view has been clarified in Para 7.5 of the Explanatory Notes to the provisions of the Finance (No. 2) Act, 2014 issued vide Circular No. 1/2015 dated 21st January, 2015. Section 11 was amended by the Finance (No. 2) Act, 2014 whereby a new sub-section has been

inserted which provides that under section 11, income for the purposes of its application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under section 11 in the same or any other previous year. Para 7.5 of the said Explanatory Notes is reproduced as under:

"7.5 The second issue which had arisen was that the existing scheme of section 11 as well as section 10(23C) of the Income-tax Act provided exemption in respect of income when it is applied to acquire a capital asset. Subsequently, while computing the income for purposes of these sections, notional deduction by way of depreciation etc. was being claimed and such amount of notional deduction was not being applied for charitable purpose. As a result, double benefit was being claimed by the trusts and institutions. Therefore, these provisions were required to be rationalized to ensure that double benefit is not claimed and such notional amount does not get excluded from the condition of application of income for charitable purpose."

4.3.4 There are many conflicting judgments of various Hon'ble High Courts, including that of the jurisdictional High Court, both in favour and against allowability of depreciation. The Hon'ble Delhi High Court, in the case of Director of Income Tax (Exemption) vs. Charanjiv

Charitable Trust [2014] 267 CTR 305, have held that if the cost of the asset has been allowed as deduction by way of application of income, then depreciation on the same asset cannot be allowed in computation of income of the trust (Para 30). However, in a subsequent decision, the Hon'ble Delhi High Court, in the case of DIT(Exemption) vs. Indraprastha Cancer Society in ITA No. 240, 348, 406, 463 & 464/2014 vide the order dated 18.11.2014, have held that the assessee is eligible for depreciation in the case of charitable or religious institution also.

“4.3.5 As regards the reliance by the Assessing Officer on the judgment of the Hon'ble Supreme Court in the case of Escorts Limited Vs. Union of India, (supra), it is to be noted that in the case of, Indraprastha Cancer Society (supra), the Hon'ble Delhi High Court have relied on its decision in DIT Vs. Vishawajagriti Mission [(2013) 262 CTR 558] wherein the said decision the Hon'ble Supreme Court was distinguished. It has been mentioned in the said order that in Escort Ltd the claim for depreciation under section 32 of the Act was denied as the entire expenditure on the capital asset had been allowed under section 35(2)(iv) while computing business profit and loss. It has further being noted by the Hon'ble court that the Supreme Court was not concerned with the case of charitable trust/institution, and the question as to whether income under the head "profit and gains of business" should be computed on commercial

principles in order of determine the amount of income available in application for charitable purposes. Similar position exists with respect to the decision of the Hon'ble Supreme Court in the case of J. K. Synthetic Limited (supra) which has been referred by the Assessing Officer.

4.3.6 Recently in the case of Commissioner of Income-tax-Ill, Pune vs. Rajasthan and Gujarati Charitable Foundation, Poona in Civil Appeal No. 7186/2014 vide order dated 13/12/2017, the Hon'ble Supreme Court have held that depreciation is allowable in case of charitable institutions.

4.3.7 In view of the discussion above and relying on the decision of the Hon'ble Supreme Court in the case of Commissioner of Income-tax-Ill, Pune vs. Rajasthan and Gujarati Charitable Foundation, Poona (supra) and the Hon'ble Delhi High Court in the case of Indraprastha Cancer Society and others (supra), the Assessing Officer is directed to allow depreciation as application of income. Ground of appeal no. 4 is allowed.

10. We find that the Ld. CIT(A) has deleted the addition relying on the decision of Hon'ble Supreme Court in the case of **Rajasthan and Gujarat the charitable foundation Poona** (supra). Further we find that section 11 (6) of the Act has been inserted by way of Finance Bill 2014, which has restricted deduction of depreciation in case of trust etc. The relevant provision is reproduced as under :

“(6) In this section where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.”

11. We note that the section 11(6) has been made effective from 01/04/2015 i.e. assessment year 2015-16 onwards and hence, same is not applicable for the year under consideration i.e. for A.Y.2014-15. The Hon’ble Supreme Court has also made observation to this effect in the case of Rajasthan and Gujarat the charitable foundation Poona (supra). In view of the above, we do not find any error in the order of the Learned CIT(A) on the issue in dispute and accordingly, the ground No.2 of the appeal of the Revenue, is dismissed.

12. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 02.12.2021.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated:02.12.2021

Neha

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation:	
2.	Date on which the draft of order is placed before the Dictating Member:	
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the final order received after having been signed/pronounced by the Members:	
7.	Date on which the final order is uploaded on the website of ITAT:	02.12.2021
8.	Date on which the file goes to the Bench Clerk	
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	