

आयकर अपीलीय अधीकरण, न्यायपीठ –“B” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
[Before Shri A. T. Varkey, Judicial Member & Shri Manoj Kumar Aggarwal, AM]

**I.T.A. No. 2076/Kol/2019**  
**Assessment Year: 2013-14**

M/s. Apeejay Trust (PAN: AAATA3695H)	Vs.	Income-tax officer (Exemption) Ward-1(4), Kolkata.
Appellant		Respondent

Date of Hearing (Virtual)	10.11.2021
Date of Pronouncement	08.12.2021
For the Appellant	Shri Ashish Brahma, CA
For the Respondent	Smt. Ranu Biswas, Addl. CIT

**ORDER**

**Per Shri A. T. Varkey, JM:**

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-25, Kolkata dated 11.06.2019 for AY 2013-14 on the following grounds:

*“Ground No (1): That the CIT(A) erred in upholding the decision of the AO to the effect that the amount of income allowed to be accumulated indefinitely u/s 11 (1)(a) of the Income-tax Act 1961 - is to be calculated @ 15% of the figure arrived at by reducing certain "Administration & Establishment Expenses" from the gross receipts, instead of calculating the same @ 15% of the figure of gross receipts itself - as contended by the appellant and which contention is also borne out by the scheme for determination of such income [to be accumulated indefinitely u/s 11 (1)(a)] - as per the relevant tax- return (ITR-7)*

*Ground No (2): That without prejudice to Ground No. (1) - the CIT(A) erred in upholding the decision of the AO whereby a certain part of income claimed by the appellant as 'applied' for charitable purposes was identified & considered as "Administration & Establishment Expenses" despite:*

*(i) the absence of any specific 'in-principle' provisions in the Income-tax Act 1961 (as applicable to assesses to whom provisions of Section 11 to 13 apply) for such identification & consideration and*

*(ii) the absence of any machinery provision - to ascertain the nature of expenses to be identified & considered as "Administration & Establishment Expenses"*

*and as a consequence the manner of computing the income to be accumulated indefinitely u/s 11 (1)(a) - as adopted by the AO - fails.”*

2. Briefly stated facts are that the assessee is a public charitable trust formed with the object of giving donations to needy persons towards medical aid, education

for under privileged children, distribution of clothes etc. It is also registered u/s. 12A of the Income Tax Act, 1961 (hereinafter referred to as the "Act"). The assessee submitted its return of income for the AY 2013-14 showing the total income returned as NIL. The brief facts as noted by the AO are as under:

*"4. Administrative & Establishment Expenses:*

*4.1 Section 11(1)(a) of the Act says that " ..... the following income shall not be included in the total income .... " provided "income derived from property held by trust wholly for charitable trust or religious purpose, to the extent to which such income is applied to such purpose in India ". It clearly means that income of the trust would be taxable unless it is applied for charitable purpose. But there is one relaxation and mentioned in the same section 11(1)(a) of the Act. A part of income can be accumulated or set apart without being applied to the extent of ".... is not in excess of 15% of the income from such property". This accumulation will take place only when application is less than income and is allowed to the extent of 15% of income.*

*4.2 Examination of the computation reveals that assessee has claimed different administrative and establishment expenses that are included in the claimed application for achieving the stated objectives of the organisation. Further accumulation was claimed u/s 11(1)(a). This accumulation is calculated @ 15% of gross receipt of Rs. 2,11,46,637 of the assessee. The prime issue in this regard is whether the accumulation of 15% is to be allowed on gross receipt or on income available for charitable and religious purposes should be considered as the base figure for calculation of 15%. In its computation the assessee showed gross receipt as income for the purpose of calculation of 15%.*

*4.3. Income to be considered will be that, which is arrived at in the context of what is available in the hands of the assessee, subject to adjustment of any expenses extraneous to the trust. Therefore administrative and establishment expenses are to be deducted from the gross receipt to determine the income available for application. Administrative & establishment expenses are considered as a charge to the income of the organization and, therefore, only the income, after such expenses are taken out from gross receipt available for charitable purposes. Accumulation of 15% is to be calculated on this figure i.e. income available for application.*

*4.4 Administrative & establishment expenses are neither directly nor proximately to charitable purpose nor are these expenditures directed to achieving the objectives of charity. It is the net income, after deducting these expenses, is available in the hands of the assessee trust for charitable activity. These expenses are directly related to earning income and are deductible from gross receipt as expenses under normal commercial principle. These are expenses attributable to earning income and not application of income u/s 11. All applications are undoubtedly expenses but all expenses are not application of income. It is now crystal clear that income available for application u/s 11 is to be computed in normal commercial manner. The administrative and establishment expenses which are allowable under normal commercial principle but cannot be a part of application of income u/s 11 as these are not directly and proximately related to the proclaimed objective of the trust.*

*4.5 In view of above administrative & establishment expenses being attributable to earning income - are deductible from gross receipt to determine the net income available for application - for charitable purposes for the purpose of calculation of allowable accumulation of 15% under section 11(1)(a) of the Act.*

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*4.6 Vide the notice u/s 142(1) dated 10.06.2015 (Item no. 14) the assessee was informed "that 15% accumulation would be available on the income available for application and not on gross receipt. Income available for application is to be arrived at by deducting administrative and establishment expenses from the gross receipt".*

3. Aggrieved, by the order of the AO that 15% accumulation of income would be available only on the income available for application and not on the gross receipt of income as claimed by the assessee, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to affirm the order of AO. So the assessee filed this appeal before this Tribunal.

4. We have heard rival submissions and have considered the material available on record. It is noted that Assessee Trust is enjoying registration u/s. 12A of the Act. It is noted that the issue that arises for consideration is whether 15% accumulation for application in future has to be calculated on gross receipt or net receipt after deduction of revenue expenditure. The assessee claimed accumulation of income for application for charitable purpose at 15% of the gross receipts. The AO was of the view that accumulation will be allowed only to the extent of 15% of the income after revenue expenditure. In other words, income to be set apart u/s. 11(1) Act has to be computed at 15% of the net income i.e. gross receipts minus revenue expenditure and not on the gross receipts as claimed by the assessee. The Ld. CIT(A) upheld the view of the AO. We find that this issue is no longer res integra as held by the Special Bench of the Mumbai in the case of Bai Sonabai Hirji Agency Trust Vs. ITO 93 ITD 0070 (SB). Further, it is noted that this precise issue came up before the coordinate Bench of this Tribunal (Bangalore Bench) in ACIT (Exemption) Vs. Bhagwan Mahaveer Memorial Jain Educational & Cultural Trust, ITA Nos. 1514 & 1515/Bang/2016 for AYs 2020-11 and 2011-12 and ITA No. 137/Bang/2017 for AY 2012-13 dated 21.08.2019, wherein it was held as under:

*"16. The third issue that arises for consideration in ITA No.1515/Bang/2016 for AY 2011-12 is as to whether 15% accumulation for application in future has to be calculated on gross receipts or net receipts after deduction of revenue expenditure. The Assessee claimed accumulation of income for application for charitable purpose at 15% of the gross receipts. The AO was of the view that accumulation will be allowed only to the extent of 15% of the income after revenue expenditure. In other words income to be set apart u/s.11(1)(a) of the Act has to be computed at 15% of the net income i.e., gross receipts minus revenue expenditure and not on the gross receipts as claimed by the Assessee. Since in the case of the Assessee, the gross receipts after revenue expenditure was nil, the AO denied the benefit of accumulation to the Assessee.*

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17. *On appeal by the Assessee, the CIT(A) allowed the claim of the Assessee. Aggrieved by the order of the CIT(A), the Revenue has raised the aforesaid ground of appeal before the Tribunal.*

18. *The issue to be decided is therefore as to whether for the purpose of computing accumulation of income of 15% under Sec.11(1)(a) of the Act, one has to take the gross receipts or gross receipts after expenditure for charitable purpose i.e., the net receipts. This issue is no longer res integra and has been decided by the Special Bench Mumbai in the case of Bai Sonabai Hirji Agiary Trust Vs. ITO 93 ITD 0070 (SB). The facts in the aforesaid case were that the assessee was a public charitable trust enjoying exemption under s. 11 of the IT Act. As per the requirement of s. 11(1) of the IT Act, as it prevailed at that point of time, the assessee had to apply 75 per cent of its income for the objects and purposes of the trust and the assessee was permitted to accumulate or set apart up to 25 per cent of its income, which was subject to fulfilment of other conditions. While calculating the aforesaid 25 per cent, the important question which arose was as to whether for this purpose, the gross income earned by the assessee is relevant or the income as computed in accordance with the provisions of IT Act. In other words, whether outgoings from out of gross income which are in the nature of application of income, should be first deducted from the gross income and 25 per cent of only the remaining amount should be allowed to be accumulated or set apart. The Special Bench of the ITAT on the issue held as follows:*

*"9. Coming to the merits of the issue, we are of the view that the same is clearly covered by the decision of the Hon'ble Supreme Court in the case of CIT vs. Programme for Community Organization (supra). In the decision, their Lordships, after taking note of provisions of s. 11(1)(a), have held as under :*

*"Having regard to the plain language of the above provision, it is clear that a charitable or religious trust is entitled to accumulate twenty-five per cent of its income derived from property held under trust. For the present purposes, the donations the assessee received, in the sum of Rs. 2,57,376, would constitute its property and it is entitled to accumulate twenty-five per cent thereof. It is unclear on what basis the Revenue contended that it was entitled to accumulate only twenty five per cent of Rs. 87,010.*

*For the aforesaid reasons, the civil appeal is dismissed."*

*It is clear from the above that deduction of twenty-five per cent was held to be allowable not on total income as computed under the IT Act. Any amount or expenditure, which was application of income, is not to be considered for determining twenty five per cent to be accumulated. Their Lordships, as noted earlier, affirmed the decision of Kerala High Court in (1997) 141 CTR (Ker) 502 : (1997) 228 ITR 620 (Ker) (supra) wherein it is held as under :*

*"At the outset, the statutory language of s. 11(1)(a) of the IT Act, 1961, 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. It is thereafter the statutory provision proceeds further that such income is not to be understood to be in excess of 25 per cent of the income from such properties. In other words, the very language of the statutory provision under consideration sets apart 25 per cent of the income from the source of property with reference to the extent to which such income is applied for such purposes, charitable or religious. In other words, for the purpose of s. 11(1)(a) of the Act, the income in terms of relevance would be the income of the trust from and out of which 25 per cent is set apart in accordance with the spirit of the statutory provision."*

*This means that, when it is established that trust is entitled to full benefit of exemption under s. 11(1), the said trust is to get the benefit of twenty-five per cent and this twenty-five per cent has to be understood as income of the trust under the relevant head of s. 11(1). In other words, income that is not to be included for the purpose of computing the*

*total income would be the amount expended for purposes of trust in India. Their Lordships in the above case have emphasized on the clear and unambiguous language of s. 11(1)(a) and decided the matter on the basis of the same. It has been held that as per the statutory language of the above section the income which is to be taken for purpose of accumulation is the income derived by the trust from property.*

*If both the decisions are carefully read, it becomes evident that any expenditure which is in the shape of application of income is not to be taken into account. Having found that trust is entitled to exemption under s. 11(1), we are to go to the stage of income before application thereof and take into account 25 per cent of such income. Their Lordships have pointed that the same has to be taken on "commercial" basis and not "total income" as computed under the IT Act. Their Lordships in the decided case rejected the contention of the Revenue that the sum of Rs 1,70,369 which was spent and applied by the assessee for charitable purposes was required to be excluded for purpose of taking amount to be accumulated.*

*Having regard to the clear pronouncement of their Lordships of the Supreme Court, it is difficult to accept that outgoing 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 Zorastrian Anjuman Trust vs. CIT (supra). No reason whatsoever has been given by the Revenue authorities for deducting Rs. 2,17,126 in this case for purposes of s. 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 CBDT has also been considered by the Hon'ble Kerala High Court in its decision referred to above. Accordingly the question referred to is answered in the affirmative and in favour of the assessee."*

*19. The aforesaid decision clearly supports the plea of the Assessee. Following the same, we hold that the accumulation u/s.11(1)(a) of the Act should be allowed as claimed by the Assessee. The relevant ground of appeal of the revenue is accordingly dismissed."*

5. Therefore, respectfully following the aforesaid Tribunal's decision in Bhagwan Mahaveer Memorial Jain Educational & Cultural Trust (supra) we hold that the accumulation u/s. 11(1)(a) of the Act should be allowed as claimed by the assessee and the AO is directed to do so. This ground of appeal of assessee is allowed.

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

Order is pronounced in the open court on 8<sup>th</sup> December, 2021.

Sd/-  
(Manoj Kumar Aggarwal)  
Accountant Member

Sd/-  
(A. T. Varkey)  
Judicial Member

Dated: 8<sup>th</sup> December, 2021

JD, Sr. PS

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Copy of the order forwarded to:

1. Appellant- M/s. Apeejay Trust, 15, Park Street, Kolkata-700 016.
2. Respondent – ITO, (exemption), Ward-1(4), Kolkata.
3. CIT(A)-25, Kolkata.(sent through e-mail)
4. CIT, Kolkata.
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO  
ITAT, Kolkata Benches, Kolkata

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