

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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.583/Bang/2021
Assessment year : 2014-15

The Income Tax Officer, Ward-1 (E), Mangaluru.	Vs.	M/s. Shiruru Welfare Trust, Green Valley National School Campus, National Highway 66, Shiruru – 576 228. Karnataka. <b>PAN: AAETS 4222L</b>
APPELLANT		RESPONDENT

Appellant by	:	Shri Siddesh S. Gaddi, CA
Respondent by	:	Capt. Pratap Shoury Arya, Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	21.12.2021
Date of Pronouncement	:	21.12.2021

**ORDER**

*Per Chandra Poojari, Accountant Member*

This appeal by the revenue is directed against the order of the  
CIT(Appeals) dated 29.7.2016 on the following grounds:-

- “1) The order of the learned CIT (A) is opposed to the law and facts of the case.
- 2) Whether on the facts and in the circumstances of the case and in law, the CIT(A), NFAC is right in law in allowing the claim of the assessee for carry forward of deficit, ignoring the fact that there is no express provision in the Income Tax Act 1961, allowing such claim, and without appreciating the fact

that this would have the effect of granting double benefit to the assessee, first as accumulation of income u/s.11(1)(a) or corpus donation u/s.11(1)(d) in the earlier/current year, or exempt income u/s.10(34), and then as application of income u/s. 11(1)(a) in subsequent years which is legally not permissible?”.

- 3) Any other grounds which may arise at the time of hearing.
- 4) The order of the learned CIT (A),NFAC may be set-aside and the order of the A.O. may be confirmed.”

2. After hearing both the parties, we are of the opinion that similar issue came up for consideration before the Tribunal in assessee's own case for AY 2011-12 in ITA No.2165/Bang/2017, order dated 28.3.2018 wherein it was held as follows:-

“Ground No.3(3.1 and 3.2) – Carry forward of undisclosed deficit for application

6.1 The Id DR was heard in support of the grounds raised on this issue (Supra) and submitted that carry forward of unabsorbed deficit for application in subsequent years is not permissible since there is no specific provision in this regard in either sections 11 and 13 of the Act which are in respect of assessment of trusts, and therefore, contended that assessee's claim be rejected. Strong support was placed to the orders of the Assessing Officer on this issue.

6.2 According to the Id AR for the assessee, the assessee is entitled to carry forward the unabsorbed deficit for application against income of subsequent years. It is submitted that the said issue is covered by the decision of the Co-ordinate bench of this Tribunal in the case of ITO (Exemption) Vs. Shradha Trust in ITA No.899/Bang/2016 dated 7/4/2017.

6.3.1 We have heard the rival contentions and perused and carefully considered the material on record, including the judicial pronouncements cited. We find that the issue before us of carry forward of unabsorbed deficit for application against income of

subsequent years is covered by the decisions of the Co-ordinate Benches of this Tribunal in the case of Jyothi Charitable Trust (60 taxmann.com 165) and the case of ITO (Exemption) Vs. Shraddha Trust in ITA No.899/Bang/2016 dated 7/4/2017. In the case of Shraddha Trust (Supra) the Co-ordinate bench at para 8 of its order has held as under:-

8. The final grounds of appeal relates to carry forward of excess application of income to subsequent years. This issue is covered against the revenue by co-ordinate bench of Tribunal in the case of Deputy Director of Income-tax vs. Jyothy charitable Trust (60 taxmann.com 165). The relevant part of the order is reproduced below:

"14. We have considered his submission. Section 11(l)(a) does not contain any words of limitation to the effect that the income should have been applied for charitable or religious purpose only in the year in which the income has arisen. The application for charitable purposes as contemplated in section 11(l)(a) takes place in the year in which the income is adjusted to meet the expenses incurred for charitable or religious purposes. Hence, even if the expenses for such purposes have been incurred in the earlier years and the said expenses are adjusted against the income of a subsequent year, the income of such subsequent year can be said to be applied for charitable or religious purposes in the year in which such adjustment takes place. In other words, the set-off of excess of expenditure incurred over the income of earlier years against the income of a later year will amount to application of income of such later year. The above is the position of law as held in the case of CIT v. Maharana of Mewar Charitable Foundation [1987] 164 ITR 4391[1986] 29 Taxman 476 (Raj) and CIT V. Plot Swetamber Murli Pujak Jain Mandal [1995] 211 ITR 293 (Guj.). In CIT Vs. Institute of of Banking Personnel Selection [2003] 264 ITR 110/131 Taxman 386 (Born.) it was held that in case of charitable trust whose income is exempt under s. 11, excess of expenditure in the earlier years can be adjusted against income of subsequent years and

such adjustment Would be application of Income for subsequent years and that depreciation is allowable on the assets the cost of which has been fully allowed as application of income under s. 11 in past years. In *Govindu Naicker Estate v. Asst. DIT* [2001] 248 ITR 368/[1999] 105 Taxman 719 (Mad.), the Hon'ble Madras High Court held that the income of the trust has to be arrived at having due regard to the commercial principles, that s. 11 is a benevolent provision, and that the expenditure incurred on religious or charitable purposes in earlier year or years can be adjusted against the income of the subsequent year. The principle that the loss incurred under one head can only be set off against the income from the same head is not of any relevance, if the expenditure incurred was for religious or charitable purposes, and the expenditure adjusted against the income of the trust in a subsequent year, would not amount to an incidence of loss of an earlier year being set off against the profit of a subsequent year. The object of the religious and charitable trust can only be achieved by incurring expenditure and in order to incur that expenditure, the trust should have an income. So long as the expenditure incurred is on religious or charitable purposes, it is the expenditure properly incurred by the trust, and the income from out of which that expenditure is incurred, would not be liable to tax. The expenditure, if incurred in an earlier year is adjusted against the income of a later year, it has to be held that the trust had incurred expenditure on religious and charitable purposes from the income of the subsequent year, even though the actual expenditure was in the earlier years, if in the books of account of the trust such earlier expenditure had been set off against the income of the subsequent year. The expenditure that can be so adjusted can only be expenditure on religious and charitable purposes and no other, The High Court relied on the decision in the case of *Society of Sisters of ST. Anne* (supra )."

Respectfully following the ratio laid down in the above decision we dismiss the ground of appeal raised by the revenue.”

6.3.2 Following the decision of the co-ordinate bench in the case of Shraddha Trust in ITA No.899/Bang/2016 dated 7/4/2017, we dismiss ground No.3(3.1 and 3.2) raised by the Revenue.”

3. Respectfully following the above order of the Tribunal, we are inclined to dismiss the appeal of the revenue on similar reasons.

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

Pronounced in the open court on this 21<sup>st</sup> day of December, 2021.

Sd/-  
( BEENA PILLAI )  
JUDICIAL MEMBER

Sd/-  
( CHANDRA POOJARI )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 21<sup>st</sup> December, 2021.

*/Desai S Murthy/*

Copy to:

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

By order

Assistant Registrar  
ITAT, Bangalore.