IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRIPAWAN SINGH, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./**ITA No.233/SRT/2017**

(निर्धारणवर्ष / Assessment Years: (2014-15)

(Virtual Court Hearing)

Income Tax Officer (Exemption), Ward, Room No. 105, 1st Floor, Anavil Business Centre, Aayakar Bhavan, Adajan Hazira Road, Surat-395 009	**Vs.**	Shree Saibaba Satsang Mandal Nani Hing Pole, Chauta Bazar, Surat-395003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AABTS 2675 Q**		
(Assessee)		**(Respondent)**

Assesseeby :Shri Mehul K. Patel, AR

Revenueby :Shri H.P.Meena, CIT-DR

सुनवाईकीतारीख/ Date of Hearing : 22/10/2021

घोषणाकीतारीख/Date of Pronouncement : 31/12/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-3, Surat [in short "the ld. CIT(A)"] in Appeal No. CAS/3/415/2016-17 dated 04.08.2017, which in turn arises out of an order passed by the Assessing Officer (AO) u/s143(3)/154of the Income Tax Act, 1961 [hereinafter referred to as the "Act"], dated 25.01.2017.

2. Grounds of appeal raised by the Revenue are as follows:

"1) The Ld. CIT(A) has erred in law and on facts in allowing the appeal of assessee by holding that amounts received in earmarked funds are eligible for exemption u/s. 11(1)(d) of the Act without appreciating the fact that the assessee had not furnished any evidence during the course of assessment proceedings to establish that the donations received for specific expenditure with specific directions from the donors that they shall form part of the corpus of the assessee trust.

2)The Ld. CIT(A) has erred in law and on facts in deleting the amount of depreciation ofRs.28,46,631/-which amount to double deduction as 100% of deduction was allowed to the assessee as application of income.

3) The Ld.CIT(A) has erred in law and on facts in deleting the interest income of Rs.23,32,267/- by holding that the assessee has been offering interest income in

the year of receipt since many years and the AO has accepted the same in earlier years.

4)The Ld. CIT(A) has erred in law and on facts in deleting the rent income received of Rs.2,22,754/- by holding that the assessee has been offering interest income in the year of receipt since many years and the AO has accepted the same in earlier years.

5) The Ld.CIT(A) has erred in law and on facts in allowing the claim of the assessee to carry forward deficit of Rs.71,91,780/-.

6) On the facts and circumstances of the case, the Ld. Commissioner of Income-Tax (Appeals) ought to have upheld the order of the Assessing Officer.

7) It is, therefore, prayed that the order of the Ld. Commissioner of Income-Tax (Appeal) may be set aside and that of the Assessing Officer be restored."

3. The first ground of Revenue is regarding disallowance of exemption of Rs.2,64,21,619/- received as donation in earmarked funds. We have heard both the parties. The Learned Counsel contested that assessee has furnished complete evidences of donations received, confirmation by the donor, etc before the ld AO. The ld Counsel further claimed that the temple hundis are labeled and donations received in Hundis marked as' **Corpus Fund** ' and are entered in separate account in the ledger. During the appellate proceedings assessee submitted a photos of Hundi. The inspector was deputed to visit the Temple and give factual report. The inspector vide his report dated 10.07.2017 has confirmed that on the donation boxes (HUNDI), the word 'Corpus Fund ' are mentioned as also words Tabibi fund, Mandir Dharmashala Fund, Shankat Nivaran Fund, Kelvani Fund (Education) etc. Further, the AO has perused the samples of the letters of the donors. These letters clearly states for which purpose / fund the donation is meant for viz Tabibi fund, Mandir Dharmashala Fund, Shankat Nivaran Fund, Kelvani Fund (Education), etc. The letters of donors were produced before the Id Assessing Officer as well as evident from the last 3 lines of letter of assessee-trust reproduced in page 5 of the assessment order.

On careful consideration of the facts of the assessee`s case, ld CIT(A) relied on the following decisions of jurisdictional Hon'ble High Courts and Tribunal:

(a) In the order of the Hon'ble' jurisdictional High Court (Gujarat) in the case of Sthanakvasi VardhamnVanik Jain Sangh (2003) 260 ITR 366, it was held that

donation for construction of wadi for the caste people which was directly taken to balance sheet without considering it as income was contribution towards "Corpus Fund'. Here, the specific mention of the words "**Corpus Fund**" was not deemed necessary.

(b) The Hon'ble ITAT Ahmedabad in the case of ITO v/s Satya Kabir Sahabani Gadi (1994) 50 TTJ (Ahd) 501 held that 'Building Fund and Kayami Fund were '***Corpus Funds***'In this case, it was held that receipts received from a drama staged for the purpose of construction of a new building formed 'Corpus Fund'. The relevant portion of that order is reproduced below:-

> *"We have considered the rival submissions and perused the facts on record. We have also gone through the list of donors and perused the receipts issued by the assessee-trust. These receipts contained names and addresses of the donors and the purpose for which the donations were made have been given either 'Bldg. Fund' or '**Kayami Fund**'. We find that the 'Bldg.Fund' is to be spent towards construction of the building whichforms part of the capital of the trust and, hence, these donations constituted towards the corpus of the trust. We find that the word '**Kayami**' is a Gujarati word which means in English '**permanent**'. Thus the composition of this fund is ofpermanent nature and the contributions made to it are to be utilised towards the properties of the fund such as immovableproperties. Thus, '**Kayami Fund**' constituted the corpus of thetrust. In our view the voluntary contributions made with a specific direction that they shall form part of the corpus of the donee-trust and accepted by the donee-trust as such, are not voluntary contributions which constituted the income within the meaning of section 12 of the Act, because the subject-matter of the donation becomes part of the corpus or capital of the donee trust and cannot constitute income of the receiving trust. Such contributions will not, therefore, fall within the purview of section 12 of the Act. We are supported in thisproposition by the judgment of Allahabad High Court in the case of Sri Dwarkadheesh Charitable Trust v. ITO (1975) 98 ITR 557 (All.) and the judgment of Hon'ble Gujarat High Court in the case of Commissioner v. BalUtkarsh Society (1979) 119 ITR 137 (Guj.) and the decision of the Tribunal Delhi Bench 'A' in the case of Dharam Partishithanam (supra) and the decision of Tribunal in the case of St. Ann's Home for the Aged (supra). In the instant case since the donations were made with the specific directions that they shall form part of the corpus of the donee-trust and accepted by the donee-trust, as such, we find no justification in the action the ITO in subjecting these donations to tax"*

(c) In another case, the Hon'ble jurisdictional ITAT Ahmedabad in the case of DIT (Exp) v/s N H Kapadia Education Trust, has held that contributions made by parents / students to the assessee - Trust, towards different funds, such as library facilities, building construction, sports curriculum activities, etc , which were to be utilized for furtherance of object of the Trust, are exempted from tax liability. The relevant portion of that Tribunal's order is reproduced below for reference.

> *"Taking into account all the facts as discussed in the foregoing paragraphs, it is to be said that the stand of the Assessing Officer was rather misconceived in holding that the contribution towards different corpus funds as current income of the assessee liable to be taxed whereas the Commissioner (Appeals) was justified inhere finding that the said contributions were in the nature of corpus funds and as such exempt under section 12. Therefore, the order of the Commissioner (Appeals) is confirmed with respect to this issue. [Para-4 (viic)]*
>
> Respectfully following above binding decisions, I hold that the amounts received in earmarked funds is eligible for exemption u/s 11(1)(d) . It is seen that amounts have been received in these accounts even during the earlier years. No addition has been mode on this ground u/s 143(3)."

4. During the appellate proceedings, ld CIT(A) noted that assessee has taken an alternative explanation before the assessing officer that these donations received have been fully applied for the purpose of objectives of Trust. The assessee stated that even if these donations are not treated as '**Corpus**' no addition can be made because they have been utilized for the construction of Shree Sai Dharmashala at Shirdi. The AO asked the assessee to give figures of total donations / receipts received during the year for the said corpus fund and the amount applied towards objective of the Trust. The assessee submitted that total amount of Rs.2,64,21,619/- has been received whereas the total amount utilized for the construction of Shree Shirdi Dharmashala is Rs.3,61,68,420/- during the year. Hence, the entire amount received have been applied during the year. The assessee requested that excess expenditure should be allowed to carry forward set off, during the subsequent year.

5. The Ld CIT(A) observed that alternative ground taken by the assessee is factually correct as the entire amount has been utilized for the construction of Shri Sai Dharmashala, at Shirdi. The amount has to be allowed as application

towards objectives. Therefore, based on these facts, ld CIT(A) deleted the addition. We have gone through the order of Ld CIT(A) and noted that there is no infirmity in the order passed by ld CIT(A), therefore, we approve and confirm the findings of Ld CIT(A). Hence, ground No.1 raised by Revenue is dismissed.

6. Coming to ground No.2 raised by the Revenue, whichrelates to addition on account of depreciation of Rs.28,46,631/-. We note that Assessing Officer has disallowed depreciation claimed by the assessee of Rs 28,46,631/- for the reason that entire cost of said assets is allowed as deduction as "**application of income**" in the year of acquisition. Therefore, theAssessing Officer is of the view that, granting of depreciation in this year amounts to double deduction. On appeal, the ld CIT(A) allowed the claim of the assessee. Aggrieved, the Revenue is in appeal before us. We have heard both the parties. We find no merit in Revenue's stand *qua* this ground. As per hon'ble apex court's decision in CIT vs. Rajasthan Marawari Charitable Trust Foundation Pune 402 ITR 441 (SC). Their lordships have made it clear that section 11(6) of the Act to this effect applies from 01.04.2015 not having retrospective effect. The findings of the Hon`ble Court are as follows:

*"**1.** These are the petitions and appeals filed by the Income Tax Department against the orders passed by various High Courts granting benefit of depreciation on the assets acquired by the respondents-assessees. It is a matter of record that all the assessees are charitable institutions registered under Section 12A of the Income Tax Act (hereinafter referred to as 'Act'). For this reason, in the previous year to the year with which we are concerned and in which year the depreciation was claimed, the entire expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes under Section 11(1)(a) of the Act. The view taken by the Assessing Officer in disallowing the depreciation which was claimed under Section 32 of the Act was that once the capital expenditure is treated as application of income for charitable purposes, the assessees had virtually enjoyed a 100 per cent write off of the cost of assets and, therefore, the grant of depreciation would amount to giving double benefit to the assessee. Though it appears that in most of these cases, the CIT (Appeals) had affirmed the view, but the ITAT reversed the same and the High Courts have accepted the decision of the ITAT thereby dismissing the appeals of the Income Tax Department. From the judgments of the High Courts, it can be discerned that the High Courts have primarily followed the judgment of the Bombay High Court in 'CIT v. Institute of Banking Personnel Selection (IBPS)'[2003] 131 Taxman 386. In the said judgment, the contention of the Department predicated on double benefit was turned down in the following manner:*

"3. As stated above, the first question which requires consideration by this Court is: whether depreciation was allowable on the assets, the cost of which has been fully allowed as application of income under section 11 in the past years? In the case of CIT v. Munisuvrat Jain 1994 Tax Law Reporter, 1084 the facts were as follows. The assessee was a Charitable Trust. It was registered as a Public Charitable Trust. It was also registered with the Commissioner of Income Tax, Pune. The assessee derived income from the temple property which was a Trust property. During the course of assessment proceedings for assessment years 1977-78, 1978-79 and 1979-80, the assessee claimed depreciation on the value of the building @ 2½% and they also claimed depreciation on furniture @ 5%. The question which arose before the Court for determination was : whether depreciation could be denied to the assessee, as expenditure on acquisition of the assets had been treated as application of income in the year of acquisition? It was held by the Bombay High Court that section 11 of the Income-tax Act makes provision in respect of computation of income of the Trust from the property held for charitable or religious purposes and it also provides for application and accumulation of income. On the other hand, section 28 of the Income-tax Act deals with chargeability of income from profits and gains of business and section 29 provides that income from profits and gains of business shall be computed in accordance with section 30 to section 43C. That, section 32(1) of the Act provides for depreciation in respect of building, plant and machinery owned by the assessee and used for business purposes. It further provides for deduction subject to section 34. In that matter also, a similar argument, as in the present case, was advanced on behalf of the revenue, namely, that depreciation can be allowed as deduction only under section 32 of the Income-tax Act and not under general principles. The Court rejected this argument. It was held that 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. The Court rejected the argument on behalf of the revenue that section 32 of the Income-tax Act was the only section granting benefit of deduction on account of depreciation. It was held that income of a Charitable Trust derived from building, plant and machinery and furniture was liable to be computed in 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 Income-tax 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 gross income of the Trust. In view of the aforesatated judgment of the Bombay High Court, we answer question No. 1 in the affirmative i.e., in favour of the assessee and against the Department.

4. Question No. 2 herein is identical to the question which was raised before the Bombay High Court in the case of Director of Income-tax (Exemption) v. Framjee Cawasjee Institute [1993] 109 CTR 463. In that case, the facts were as follows: The assessee was the Trust. It derived its income from depreciable assets. The assessee took into account depreciation on those assets in computing the income of the Trust. The ITO held that depreciation could not be taken into account because, full capital expenditure had been allowed in the year of acquisition of the assets. The assessee went in appeal before the Assistant Appellate Commissioner. The Appeal was rejected. The Tribunal, however, took the view that when the ITO stated that full expenditure had been allowed in the year of acquisition of the assets, what he really

> *meant was that the amount spent on acquiring those assets had been treated as '**application of income**' of the Trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by the Bombay High Court in the above judgment. Hence, Question No. 2 is covered by the decision of the Bombay High Court in the above Judgment. Consequently, Question No. 2 is answered in the Affirmative i.e., in favour of the assessee and against the Department."*

***2.** After hearing learned counsel for the parties, we are of the opinion that the aforesaid view taken by the Bombay High Court correctly states the principles of law and there is no need to interfere with the same.*

***3.** It may be mentioned that most of the High Courts have taken the aforesaid view with only exception thereto by the High Court of Kerala which has taken a contrary view in 'Lissie Medical Institutions v. CIT [2012] 24 taxmann.com 9/209 Taxman 19 (Mag.)/348 ITR 344'.*

***4.** It may also be mentioned at this stage that the legislature, realising that there was no specific provision in this behalf in the Income-tax Act, has made amendment in Section 11(6) of the Act vide Finance Act No. 2/2014 which became effective from the Assessment Year 2015-2016. The Delhi High Court has taken the view and rightly so, that the said amendment is prospective in nature.*

***5.** It also follows that once assessee is allowed depreciation, he shall be entitled to carry forward the depreciation as well.*

***6.** For the aforesaid reasons, we affirm the view taken by the High Courts in these cases and dismiss these matters."*

7. The Hon`ble Supreme Court in the case of Rajasthan Marawari Charitable Trust Foundation (supra) held that assessee is entitled to claim depreciation and amendment in Section 11(6) of the Act, vide Finance Act No. 2/2014 is effective from the Assessment Year 2015-2016. Hence, there is no infirmity in the order passed by ld CIT(A), therefore we approve and confirm the findings of Ld. CIT(A). Grounds No.2 raised by the Revenue is dismissed.

8.Coming to ground No.3 and 4 which relate to addition on account of accrued interest income of Rs.23,32,267/- and accrued rent income at Rs.2,22,754/-, respectively. Assessing Officer noticed that auditor of the assessee-trust has mentioned that assessee-trust is following mercantile system ofaccounting. Based on same, the Assessing Officer observed that interest income accrued need to be

offered to tax in year of accrual. However, ld Counsel pleads that interest and rent has been offered to tax on cash basis and by mistake it is mentioned as 'Mercantile System' in computation. The assessee filed a letter of the auditor M.S. Khilawala & Co that assessee-trust is following cash system of accounting regularly and due to oversight their firm mentioned it as 'Mercantile System'. The assessee also brought to notice that interest / rent income accrued in earlier years, but received during this year have been offered for tax in the current year. The Ld. CIT(A) found merit in argument of assessee that one system one i.e. either '**Cash System**' or '***Mercantile System***' has to be adopted to arrive at total income. The assessee has been offering interest and rent received in the year of receipt (cash system) since many years. It is settled law that "Method of Accounting' regularly followed by the assessee need not be disturbed unless on a compelling reason. In the instant assessee's case, the Ld. Counsel of assessee has clearly established that interest and rents have been regularly offered to tax on receipt basis (cash system) and the same is accepted by the Assessing Officers in earlier years. Hence, Ld. CIT(A) did not see any merit in the action of the Assessing Officer in taking the interest on accrual basis for this assessment year and therefore, Ld. CIT(A) directed the Assessing Officer to delete the said addition of interest accrued of Rs.23,32,267/- and accrued rent Rs.2,22,754/- respectively. Therefore, we are not inclined to accept the contention of the Assessing Officer in any manner and hence the additions so made has been rightly deleted by ld CIT(A). Hence ground no.3 and 4 of the Revenueare dismissed.

9. Coming tolast ground no.5, raised by Revenue which relates to claim of carry forward/set off excess/ deficit of Rs.71,91,780/-. We have heard both the parties. The ld CIT(A) held that assessee-trust is entitled to set off the excess expenditure of the earlier years against the income of current year and set off of excess expenditure of earlier years amounts to application for the purpose of section 11 of the Act. Hence, we find that CIT(A) has rightly directed the Assessing Officer to allow the set off of excess expenditure/deficit of earlier years.That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid

additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

10. In the result, appeal of the Revenue is dismissed.

Order is pronounced on 31/12/2021 by placing result on notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत/Surat/ दिनांक/ Date: 31/12/2021
DKP Out Soursing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat