

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

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

ITA Nos. 427 & 428/Bang/2020
Assessment Years : 2012-13 & 2013-14

M/s. R.N. Shetty Trust, No. 14, 7 th Floor, No. 37, Naveen Complex, M G Road, Bangalore – 560 001. PAN: AAATR2319D	Vs.	The Assistant Commissioner of Income Tax, Circle – 2 (3), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ashok Kulkarni, Advocate
Revenue by	:	Dr. Manjunath Karkihalli, CIT DR

Date of Hearing	:	16-03-2022
Date of Pronouncement	:	28-03-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals are filed by assessee against separate orders dated 24.02.2020 passed by the Ld.CIT(A)-11, Bangalore for A.Ys. 2012-13 & 2013-14 on following grounds of appeal.

ITA No. 427/Bang/2020 (A.Y. 2012-13)

	<i>Grounds of Appeal</i>	<i>Tax Effect relating to Each Grounds of Appeal</i>
1	<i>The Order of the Honorable Commissioner of Income Tax (Appeals)-11, Bengaluru, is opposed to law and facts of the case.</i>	Rs.3,86,62,267/-

2	<i>The impugned appellate order is passed in violation of principles of natural justice.</i>	Rs.3,86,62,267/-
3	<i>The impugned order is having passed without considering the materials on record including written submission is bad in law.</i>	Rs.3,86,62,267/-
4	<i>The Honorable Commissioner of Income Tax (Appeals) - 11, Bengaluru, ought to have directed the assessing officer to compute the income of the appellant in accordance with the provisions of Section 11 and 12 of the IT Act.</i>	Rs.3,86,62,267/-
5	<i>he appellant is registered u/s 12A of the IT Act, therefore the income of the appellant ought to have been computed as provided u/s 11 and 12 of IT Act.</i>	Rs.3,86,62,267/-
6	<i>The Honorable Commissioner of Income Tax (Appeals) - 11, Bengaluru, erred in upholding the addition of RS.33,57,500/- made on account of Corpus Donation by the assessing officer.</i>	Rs.10,33,439/-
7	<i>Alternatively the Honorable Commissioner of Income Tax (Appeals) -11, Bengaluru, ought to have held that the corpus donation is a capital receipt and the addition of Rs.33,57,500/- ought to have been deleted.</i>	Rs.10,33,439/-
8	<i>The Honorable Commissioner of Income Tax (Appeals) - 11, Bengaluru, ought to have deleted the addition of Rs.6,540/- made on account of sundry payments.</i>	Rs.2,013/-
9	<i>The Honorable Commissioner of Income Tax (Appeals) - 11, Bengaluru, erred in upholding the addition of Rs.6,540/- without considering the material on record.</i>	Rs.2,013/-

10	<i>The appellant craves for leave to add to, delete from or amend the grounds of appeal.</i>	Rs.3,86,62,267/-
	<i>Total Tax Effect</i>	Rs.3,86,62,267/-

ITA No. 428/Bang/2020 (A.Y. 2013-14)

<i>Grounds of Appeal</i>		<i>Tax Effect Relating to Each Grounds of Appeal</i>
1	<i>The Order of the Honorable Commissioner of Income Tax (Appeals)-11, Bengaluru, is opposed to law and facts of the case.</i>	Rs.97,51,469/-
2	<i>The Honorable Commissioner of Income Tax (Appeals) -11, Bengaluru, ought to have allowed the benefit of set off of the surplus of the current year against the earlier year's deficit on the basis of the return of income filed.</i>	Rs.97,51,469/-
3	<i>Having regard to the material on record the Honorable Commissioner of Income Tax (Appeals) -11, Bengaluru, ought to have directed the assessing officer to set-off the surplus income of the current year against earlier year's deficit.</i>	Rs.97,51,469/-
4	<i>The appellant craves for leave to add to, delete from or amend the grounds of appeal.</i>	Rs.97,51,469/-
	<i>Total Tax Effect</i>	Rs.97,51,469/-

As common issues arises in both these appeals, for the sake of convenience, we shall first consider the Assessment Year 2012-13 as under.

2. Brief facts of the case are as under:

The assessee Trust filed its original return of income on 23.11.2012 claiming exemption u/s 11 & 12. A search u/s 132 was carried out at the premises of M/s R N S Infrastructure

Limited on 16.02.2012, consequent to which a notice u/s 143(2) was issued. The assessment was concluded under section 143(3) of the Income-tax Act 1961, dated 30.03.2014 by making the following additions in addition to denial of exemption claimed by the trust:

Excess of Income over expenditure as per I & E - 12,22,49,897

Add: Corpus Donation 33,57,500

Sundry payments 6,540

33,64,040

12,56,13,937

Income assessed (rounded off)

12,56,13,940

The Ld.AO made the addition of Rs.33,57,500/- being corpus donation received by the assessee. In respect of these donations, names and addresses of the donors were available and furnished to the Ld.AO. Receipts were also issued for each and every donation and they were produced before the Ld.AO for verification. The Ld.AO stated that the trust will not qualify for deduction/exemption u/s 11 of the Act.

The Ld.AO made the addition of Rs.1100/-towards alleged sundry payments. It is submitted that entire receipts of the trust is fees received from students for which receipts are issued to students and duly accounted in the books of accounts of the trust. Apart from the school/college fees, the trust also received corpus donation from various parties which are dully accounted in the books of accounts of the trust.

Aggrieved by the order of Ld.AO, assessee preferred appeal before the Ld.CIT(A). In respect of donations disallowed, the Ld.CIT(A) observed as under:

“The appellant has received donations from several persons who have not given any specific direction as to the purpose for which the same are to be used. Nor has the appellant received instructions that the same form part of the corpus. In the absence of evidence regarding these mandatory directions, the AO has rightly held that the Appellant has wrongly considered these donations as corpus donations & the same ought to be shown as income in the Income & Expenditure account of the appellant & the corresponding obligation to ensure that a minimum of 85% of the same to be utilised for the objects of the Trust during the relevant assessment years. The AO has rightly added these amounts to the income assessable to tax in the relevant assessment years. The addition made on this ground is sustained.”

In respect of denial of exemption, the Ld.CIT(A) observed and held as under:

“15. Denial of exemption - The appellant had diverted funds to commercial enterprises in which the Trustees are substantially interested. Such diversion of funds is prohibited under the Act and will make the appellant liable for addition u/s 13 as well as derecognition for the purpose of eligibility for deduction u/s 11 of the Act. The seized material is conclusive proof that such diversion has taken place & the same has not been countered with any merit by the appellant. The AO has in a detailed manner elaborated on this issue in the assessment order. All details of how funds of the trust was embezzled and siphoned off in a clandestine manner for the benefit of trustees has been elaborated in a detailed fashion by the AO. Therefore. addition made on this count in the relevant assessment year is sustained. The ground fails.”

Aggrieved by the order of Ld.CIT(A), assessee filed appeal before this Tribunal.

Ground nos. 1 & 2 are general in nature.

Ground nos. 3-5 are in respect of denial of exemption u/s. 11.

Both sides submitted that this issue deserves to be remanded to

the Ld.AO to consider in the light of evidences / documents filed. Based on the joint submission, we direct the Ld.AO to verify the details / evidences filed by assessee in accordance with law.

Needless to say that proper opportunity of being heard must be granted to assessee.

Accordingly, these grounds raised by assessee stands allowed for statistical purposes.

Ground nos. 6 & 7 :

At the outset, the Ld. Counsel submitted that the issue in respect of disallowance of donation has been considered by the *Coordinate Bench* of this *Tribunal* for A.Y. 2006-07 in assessee's own case in *ITA No. 609/Bang/2009* by order dated 10.12.2014 as under.

"30. Before us the learned Counsel for the assessee submitted that the Assessing Officer was of the view that if the donations were to be treated towards corpus, there must be specific directions from the donors. The receipts received by the assessee were with oral directions by the donors at the time of making donations. The Act does not stipulate that the corpus donations must be accompanied by letters and the oral instructions were not sufficient. If the donations have been utilized only on capital account to bring into existence of capital asset, then it would indicate that the donations were towards corpus, because ultimately the Trust has been acquiring a capital asset which will be of enduring nature. On the strength of the Hon'ble Delhi High Court decision in the case of Director Of Income Tax vs Keshav Social & Charitable Trust reported in 278 ITR 152, he contended that the absence of identity of some of the donors would not dis entitle the Trust from exemption. The direction demanded by the Assessing Officer can be gathered from the facts and circumstances of the case. When the assessee had issued the receipts, it also indicate that the amounts were received towards corpus donations and it is a sufficient compliance. The corpus donations is straight way exempt u/s 11(1)(d) of the I.T. Act, but the assessee has recognized it as an income and applied it for the purpose of charitable object. In this situation the Assessing Officer was required to

analyze whether 85% of the income is applied towards charity or not. The moment corpus donations has been recognized as an income and not claimed exempt u/s 11(1)(d) as admissible under that section, then its character, whether corpus donations or any other income of the assessee would be irrelevant because after attaining the character of income, it is to be seen whether it is to be applied for charitable purpose or not. In the judgment of the Hon'ble Delhi High Court (supra) the assessee Trust had received anonymous donations, Assessing Officer sought to tax it IIs 68, but the Hon'ble Court has held that the Assessing Officer has mis directed himself in applying section 68 to an income receipt. The income has already been shown by the assessee, now it is to be seen whether it has been applied for charitable purpose or not."

It has been brought to our notice that revenue had filed appeal against the order of the *Tribunal* before the *Hon'ble Karnataka High Court* which is subsequently withdrawn and relevant orders passed by *Hon'ble High Court* are placed at pages 69 to 74.

The Ld.CIT.DR relied on the orders passed by authorities below.

As observed by this *Tribunal* in A.Y. 2006-07, the donations received cannot be disallowed as the same has been recognized as income.

The Ld. Counsel submitted that even for the year under consideration, the corpus donation has been added in the income assessed as has been observed in the preceding paragraphs. Accordingly, we direct the assessee to prove the said amount has been towards corpus donation and to decide the claim afresh.

Accordingly, ground nos. 6 & 7 stands allowed for statistical purposes.

Ground nos. 8 & 9 relates to the addition made on account of sundry payments amounting to Rs. 6,540/-. Considering the smallness of the issue, the Ld.Counsel did not press upon the grounds.

Accordingly, the same is dismissed as not pressed. However, liberty is granted to assessee to allege the issue in any other relevant Assessment Years.

Assessment Year 2013-14:

The only issue that is raised is in respect of the disallowance of surplus which was claimed by the assessee as excess application of earlier years.

The Ld. Counsel submitted that the assessee had set off the surplus for the year under consideration against earlier year deficits based on previous year computation and return of income. The order for the A.Y.2009-10 and 2012-13 was pronounced on 31.03.2015 which is much after the filing of return. At the time filing of return of income, the assessee trust was unaware about the status/outcome of the assessment orders. Therefore at the time of filing the appeal, the assessee firm was under the belief that there was no need to file the Form.10, since the there was no surplus after setting off the previous deficits. Further the assessee filed the Form.10 at the time of hearing which should have been accepted by the Ld.AO. Mere non-filing of Form.10 is only a technical deficiency which can be cured. It is submitted that the revenue without verifying the details filed by assessee denied the claim of set off and carry forward the surplus for application. The Ld.CIT(A) denied the claim by holding that assessee had diverted the income and upheld the addition made by the Ld.AO.

The Ld.AR submitted that both these observations is based on surmises and conjectures.

On the contrary, the Ld.CIT.DR submitted that the issue may be remanded to the Ld.CIT(A) for verification.

We have perused the submissions advanced by both sides in the light of records placed before us.

On perusal of computation of total income made by the assessee it is observed that assessee has shown total receipts for the year Rs. 63,68,61,280/-. The total receipts reduced by claiming various amounts such as (i) Amounts do not forming part of income i.e. Fixed Deposits-Encashed & Receipts towards Corpus Object in total Rs. 18,58,03,638/- (ii) Amount not available for application i.e. Sundry Creditors & payables of Rs. 2,66,10,036/- (iii) Administrative & Operative Expenses of Rs. 22,01,73,691/- and Balance arrived at Rs.20,42,73,915/-. From the Balance 15% of amount set apart for future application i.e. Rs.3,06,41,087/- and rest of Rs. 17,36,32,828/- is taken for application. On application assessee has claimed expenses on the object of the trust, capital investment, capital investment (RNSIT) and Repayments of loans and arrived at Rs. 3,21,24,822/- as surplus for the year. The surplus amount of Rs. 3,21,24,822/- has been set off by the assessee against excess application of earlier years and Total income is arrived for the year at Rs. Nil.

The set off made by assessee against excess application of earlier years of Rs. 3,21,24,822/- is inadmissible, as during scrutiny proceeding u/s 143(3)r.w.s. 153C of the I.T.Act,1961 for A.Y. 2009-10 & 2012-13 assessee's claimed Deficit for the year of Rs.16,28,02,142/- & Rs.2,31,43,740/- respectively were converted into income, so that, there is no Excess Application of

fund available to be carried forward available for set off. Hence, Set off against Excess Application of Earlier Years amounting to Rs. 3,21,24,820/- claimed by the assessee was disallowed by the revenue.

On the issue of carry forward and set off of excess application of fund, assessee is entitled to such claims as decided by the *Hon'ble Karnataka High Court* in case of *PCIT vs. New Cambridge Educational Trust* reported in 102 CCH 230. The *Hon'ble Court* has followed the ratio laid down by *Coordinate Bench* in case of *CIT vs. Society of The Sisters of St. Anne* reported in (1984) 146 ITR 28.

In the present case, assessee has filed form -10 before the Ld.AO during the assessment proceedings which was not considered by the authority. On an appeal before the Ld.CIT(A), the disallowance was upheld by observing as under.

“12. Denial of exemption - The appellant had diverted funds to commercial enterprises in which the Trustees are substantially interested. Such diversion of funds is prohibited under the Act and will make the appellant liable for addition u/s 13 as well as derecognition for the purpose of eligibility for deduction u/s 11 of the Act. The seized material is conclusive proof that such diversion has taken place & the same has not been countered with any merit by the appellant. The AO has in a detailed manner elaborated on this issue in the assessment order. All details of how funds of the trust was embezzled and siphoned off in a clandestine manner for the benefit of trustees has been elaborated in a detailed fashion by the AO. Therefore, addition made on this count in the relevant assessment year is sustained. The ground fails.”

Before us, the Ld.AR was not able to controvert the above findings by the Ld.CIT(A), however made a plea that the same may be verified by the authorities below.

In our opinion, considering the joint submission by both sides and in the interest of justice, we remit this issue to the Ld.CIT(A) with the direction to assessee to file necessary details in respect of application of funds. The Ld.CIT(A) shall verify the details filed in accordance with law, following the principles laid down by *Hon'ble Karnataka High Court* referred to by the Ld.Counsel hereinabove.

Accordingly grounds raised by assessee stands allowed for statistical purposes.

In the result, both the appeals filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 28th March, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 28th March, 2022.
/MS /

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore