IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA No. 5196/Del/2018
(Assessment Year : 2014-15)

Rajiv Gandhi Charitable Trust, Jawahar Bhawan, 3rd Floor, Rajendra Prasad Road, New Delhi **PAN : AAATR 4253 L**	Vs.	JCIT (Exemption) Range – 2 New Delhi
(APPELLANT)		**(RESPONDENT)**

Assessee by	Shri M. M. Kwatra, C.A.
Revenue by	Shri Atiq Ahmed, Sr. D.R.

Date of hearing:	16.03.2022
Date of Pronouncement:	31.05.2022

ORDER

PER ANIL CHATURVEDI, AM:

The present appeal filed by the assessee is directed against the order dated 24.05.2018 of the Commissioner of Income Tax (Appeals)-40, Delhi relating to Assessment Year 2014-15.

2. The relevant facts as culled from the material on records are as under :

3. The assessee is a Trust, registered under Section 12A of the Income-Tax Act, 1961 vide order No.DIT(E)/2002-03/R-415/02/680 dated 09.10.2012, which is also notified under Section 80G(5)(vi) of the Act. Assessee filed its return of income for assessment year 2014-15 on 29.09.2014 declaring nil income. The case was selected for scrutiny and thereafter assessment was framed under Section 143(3) of the Act vide order dated 27.12.2016 by denying claim of sale of assets as application of income.

2. Aggrieved by the order of Assessing Officer, assessee carried the matter before learned Commissioner of Income-Tax (Appeals) who vide order dated 24.05.2018 in Appeal No.445/2016-17/130 granted partial relief to the assessee.

3. Aggrieved by the order of Learned Commissioner of Income Tax (Appeals), assessee is in appeal and has raised the following grounds:

"That the Learned CIT(A) has erred in confirming the disallowance of Rs.17,11,414/- in the application of income in respect of loss on sale/write off of certain assets ignoring the fact that the term 'income' means the income as appearing in the books of the entity to be understood in commercial sense and ignoring the fact that the appellant's claim was bona fide based on the Board's circular."

4. During the course of assessment proceedings, Assessing Officer noticed that assessee had sold certain assets and the loss of Rs.14,81,627/- on the sale of such assets was claimed as application of income. The assessee was asked to show-cause as to why the loss claimed as application of income not to be disallowed as the cost of

assets was already claimed as application of income in earlier years. The assessee made detailed submission which was not found acceptable to Assessing Officer. Assessing Officer for the reasons discussed in the order, held the loss of Rs. 14,81,627/- cannot be considered as application of income.

5. Aggrieved by the order of Assessing Officer, assessee carried the matter before the learned Commissioner of Income-Tax (Appeals) who upheld the order of Assessing Officer.

6. Aggrieved by the order of learned Commissioner of Income-Tax(Appeals), assessee is now in appeal before us.

7. Before us, learned authorized representative reiterated the submission made before Assessing Officer and learned Commissioner of Income-Tax (Appeals) and further submitted that during the year, assessee had sold certain assets having book value of Rs.17,11,414/- for Rs.2,29,787 resulting into loss of Rs.14,81,627/-. He submitted that the aforesaid loss was debited to the income and expenditure account by relying on the Board's Circular No. 5- P(LXX-6) dated 19th June, 1968. He relying upon the aforesaid circular submitted that the income of the trust should be understood in its commercial sense and the income should be computed on the basis of commercial principles. He submitted that CBDT in Circular No.5-P(LXX-6) dated 19/06/68 has taken a view that the income of the trust should be understood in its commercial sense and is to be computed on the

basis of commercial principles. He further submitted that the principle that the income of the charitable assessees needs to be computed only based on commercial principles has been upheld by various Hon'ble High Courts and Hon'ble Supreme Court. He further submitted that the amendment made by Finance Act, 2014 by inserting Clause (6) is w.e.f 01.04.2015 and, therefore, not applicable to the year under consideration. He, therefore, submitted that the loss claimed be allowed as application of income.

8. Learned Departmental Representative on the other hand supported the orders of lower authorities.

9. We have considered the rival submissions and perused the material available on record. The issue in the present ground is with respect of claim of loss as application of income. It is an undisputed fact that the loss that assessee had incurred on sale of fixed assets and the same has been debited to the income and expenditure account of the assessee. We find that the CBDT in Circular No. 5-P(LXX-6) dated 19th June, 1968 has taken a view that the income of the trust should be computed on the basis of commercial principles and should be understood in its commercial sense. The relevant extract of the Circular reads as under:

> *"2. Section 11(1) provides that subject to the provisions of sections 60 to 63, "the following* ***income*** *shall not be included in the total income of the previous year. . . . "* ***The reference in clause (a) is invariably to "Income" and not to "total income".*** *The expression "total income has been specifically defined in section 2(45) as "the total amount of income computed in the manner laid down in this Act". It would, accordingly, be incorrect to assign to the word "income", used in*

section 11(1)(a), the same meaning as has been specifically assigned to the expression "total income" vide section 2(45).

3. In the case of a business undertaking, held under trust, ***its "income" will be the income as shown in the accounts of the undertaking.*** *Under section 11(4), any income of the business undertaking determined by the ITO, in accordance with the provisions of the Act, which is in excess of the income as shown in its accounts, is to be deemed to have been applied to purposes other than charitable or religious, and hence it will be charged to tax under sub-section (3). As only the income disclosed in the account will be eligible for exemption under section 11(1), the permitted accumulation of 25per cent will also be calculated with reference to this income.*

4. Where the trust derives income from house property interest on securities, ***capital gains,*** *or other sources,* ***the word "income" should be understood in its commercial sense, i.e., book income,*** *after adding back any appropriations or applications thereof towards the purposes of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted, in this connection, that the amounts so added back will become chargeable to tax under section 11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amounts spent or applied for the purposes of the trust from out of the income, computed in the aforesaid manner, should be not less than 75 per cent of the latter, if the trust is to get the full benefit of the exemption under section 11(1).”*

10. We further find that in the following decisions, it has been held that the income of the charitable assessees needs to be computed on the basis of commercial principles:

- *CIT* vs. *Programme for Community Organisation (1997) 228 ITR 620 (Ker.) since approved by the apex court (reported at (2001) 248 ITR 1 (SC)*
- *CIT v. Rao Bahadur Calavala Cunnan Chetty Charities (135 ITR 485)(Mad);*
- *CIT* v. *Sheth Manilal Ranchhoddas Vishram Bhavan Trust (70 taxman 228) (Guj)*
- *CIT v. Institute of Banking Personnel Selection (131 taxman 386)(Bom).*

11. We further find that Clause (6) has been inserted in Section 11 of the Act w.e.f 01.04.2015 which *inter alia* mandated that income which is required to be applied or accumulated or set apart for application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset the acquisition of which has been claimed as an application of income in any previous year. The aforesaid clause has been inserted w.e.f 01.04.2015 and therefore in our view it would not be applicable to the year under consideration.

12. Considering the totality of the aforesaid facts and relying on the case laws cited hereinabove, the CBDT Circular, we are of the view that the AO was not justified in denying the loss as application of income. We accordingly set aside the order of AO which has been upheld by CIT(A). **Thus the ground of assessee is allowed.**

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

Order pronounced in the open court on 31.05.2022

Sd/-	**Sd/-**
(NARENDER KUMAR CHOUDHRY)	**(ANIL CHATURVEDI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Date:- 31.05.2022
*PY**
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI