

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

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

ITA Nos. 690 & 698/Bang/2017
Assessment Years : 2010-11 & 2011-12

M/s. Amara Jyothi Education Trust, Basavanapura Road, Devasandra, Krishnarajapuram Hobli, Bangalore – 560 036. PAN: AABTA4935F	Vs.	The Deputy Director of Income Tax (Exemptions), Circle – 17 (1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Chandrashekar, Advocate
Revenue by	:	Shri V.S. Chakrapani, CIT-DR

Date of Hearing	:	01-06-2022
Date of Pronouncement	:	21-06-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals are filed by assessee against a common order dated 30.12.2016 passed by Ld.CIT(A)-14, Bangalore for A.Ys. 2010-11 and 2011-12. It is submitted that for both the years under consideration, common issues have been raised on identical facts by the assessee. Therefore for the sake of convenience, we refer to the facts and decide the issues as per the grounds raised by the assessee for A.Y. 2010-11.

2. Brief facts of the case are as under:

2.1 The assessee i.e., Amara Jyothi Education Trust is a charitable trust engaged in imparting education and has been duly recognized and granted registration under Section 12AA (a) of the Income - tax Act. The assessee Trust is registered under Section 12AA (a) of the Act dated 28.11.2007 vide No. DIT (E)/ BLR/ 12A/ A - 1103/ AABTA4395F/ E-1/ 1007-08. The assessee Trust is imparting education since its inception. The assessee Trust is running the following institutions:

- a) Amara Jyothi Public School,
- b) Amara Jyothi Public High School,
- c) Amara Jyothi PU College for Women.

2.2 The assessee Trust is filing its return of income regularly. The assessee, for the impugned assessment year 2010-11, had filed its return of income on 30.07.2010 declaring NIL income.

2.3 The case of the assessee Trust was selected for scrutiny and statutory notices were issued on the assessee and details were called for by the learned assessing officer. The assessee provided all the details called for and provided explanations.

2.4 The Ld.AO without appreciating the details and explanations filed by the assessee Trust proceeded to conclude the assessment by passing an order of assessment under section 143(3) of the Act dated 08.03.2013 determining the total income of the assessee Trust at Rs. 50,49,713/- as against the reported income of NIL. The details of the additions made by the learned assessing officer are as under:

Particulars	Amount (Rs.)	Amount (Rs.)
Gross Income as per Income tax Expenditure A/c	2,76,50,312/-	2,76,50,312/-
Add: Advance fee received as on 31.03.10	23,75,800/-	
Less: Advance fee received as on 01.04.09	<u>33,07,516/-</u>	
Gross Receipts for the year 31.03.2010		2,67,18,596/-
Application of fund		
1. Revenue expenditure	1,61,69,819/-	
Less: Depreciation	<u>14,40,850/-</u>	
	1,47,28,969/-	
2. Capital Expenditure	26,13,437/-	
Less: Loan availed for vehicle	<u>6,26,000/-</u>	
	19,87,437/-	
3. Repayment of vehicle loan	9,44,687/-	
Total Applications (B)	1,76,61,093/-	1,76,61,093/-
Balance		90,57,503/-
Less: Exemption u/s. 11(1)(a) @ 15% of the gross receipts amounting to Rs.40,07,789/-		40,07,789/-
Balance		50,49,713

2.5 Aggrieved by the order of Ld.AO, assessee preferred appeal before the Ld.CIT(A).

2.6 The Ld.CIT(A) after considering the submissions of assessee upheld the disallowance made by the Ld.AO. Aggrieved by the order of Ld.CIT(A), assessee is in appeal before us on following grounds.

“1. The order of the learned Commissioner of Income-tax [Appeals], passed under Section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. *The appellant denies itself liable to taxed over and above the income returned by the appellant of Rs. NIL, under the facts and circumstances of the case.*

3. *Denial of capital expenditure application of funds on building construction on the facts and circumstances of the case.*

[i] The learned authorities below were not justified in disallowing the application of funds on building construction amounting to Rs.1,58,04,401/- on the facts and circumstances of the case.

[ii] The learned authorities below erred in disallowing the application of funds on building construction on an erroneous premise that the Secretary/ Trustee of the Appellant Trust owned the impugned building on the facts and circumstances of the case.

[iii] The learned authorities below erred in not giving cognizance to the rectification deed dated 21.02.2013 rectifying the lease agreement dated 26.05.2010 on the facts and circumstances of the case.

[iv] The learned authorities below erred in not appreciating that the rent of only Rs.1,18,800/- was paid during the impugned assessment year and the building Block 'B' under construction was shown as Capita Work in Progress in the Balance Sheet and subsequently shown as E. Fixed Asset in the Schedule of Fixed Assets in the succeeding previous year in the books of the Appellant Trust on the facts and circumstances of the case.

4. *Accumulation of Surplus as per Section 11(2) on the facts and circumstances of the case.*

[i] The lower authorities were not justified in denying the benefit o' accumulation of surplus under Section 11(2) amounting to Rs.1,14,80,492/- on the facts and circumstances of the case.

[ii] The lower authorities erred in not denying the benefit o. accumulation of Surplus under Section 11(2) on an erroneous premise that the main object portion of the appellant trust is too vague and cannot be treated as for a specified purpose and that since the land and building was owned by the Secretary of the Appellant Trust or the facts and circumstances of the case.

5. *Levy of Interest u/s. 234B and 234C of the Act: The levy of interest under section 234 B and 234 C of the Act is also bad in law as the period, rate quantum and method of calculation adopted on which interest is levied are all not discernable and are wrong on the facts of the case*

6. *The Additions and disallowances made by the learned assessing officer and confirmed by the learned Commissioner [Appeals] are arbitrary and unreasonable and requires to be deleted in full.*

7. *Appellant craves leave of this Hon'ble Tribunal to add, alter, substitute or delete any or all of the grounds of appeal urged above at the time of hearing of the appeal.*

8. *For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.”*

3. As the Ld.AR submitted that for both the years under consideration, assessee has raised the following additional grounds vide application dated 25.03.2017.

“1. The order of the learned Commissioner of Income-tax [Appeals] in so far as it is against the appellant are opposed to law, weight of evidence, natural justice, facts and circumstances of the case.

2. The learned authorities below are not justified in disallowing the amount of depreciation Rs. 14,40,850/- by stating that depreciation would amount to double deduction on the facts and circumstances of the case.

3. The learned Commissioner of Income-tax [Appeals] is not justified in not following the decision of the Hon'ble Jurisdictional High Court of Karnataka at Bangalore in the case of DIT[E] Vs. Al-Ameen Charitable Fund Trust and Others, reported in 383 ITR 517 [Kar] dated 22/02/2016, allowing depreciation in computing the income of a charitable institution, under the facts and circumstances of the case.

4. The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.

5. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.*”

4. It has been submitted that no new facts needs to be considered in order to dispose of the additional grounds raised by the assessee vide application dated 25.03.2017. It is submitted that the additional grounds is a legal issue that goes to the root cause of the proceedings. The Ld.AR, thus prayed for the admission of additional grounds so raised by assessee.

5. On the contrary, the Ld.CIT.DR though opposed admission of the additional ground, could not bring anything on record which would challenge such a right available to assessee under the Act.

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

The Ld.DR did not object for the additional grounds being admitted.

7. We note that one of the additional grounds is directly connected with the main issue of disallowance and no new facts needs to be investigated for adjudicating the same. Another issues alleged by the assessee is a legal issue that does not require investigation of any facts.

8. Considering the submissions and respectfully following the decisions of *Hon'ble Supreme Court* in case of *National Thermal Power Co. Ltd. Vs. CIT* reported in (1998) 229 ITR 383 and *Jute Corporation of India Ltd. Vs. CIT* reported in 187 ITR 688, we are admitting the additional ground raised by the assessee.

Accordingly, the application for raising additional grounds stands allowed for both the years under consideration.

9. Ground nos. 1 to 2 is general in nature and do not require adjudication.

10. Ground no. 3 is in respect of denial of the cost of construction towards the application of funds.

We have perused the submissions of the assessee as well as the revenue based on the records placed before us.

It is an admitted fact that the land on which the building was constructed are not owned by the assessee. In principle we agree with the submissions of the Ld.AR that assessee is eligible for the cost of construction towards the application of funds, provided, the assessee is able to establish that the building that is constructed is owned by the assessee itself. Assessee is therefore directed to furnish all relevant details before the Ld.AO to establish the ownership of the said buildings of which the construction cost is considered towards the application of funds by assessee. In the event assessee is able to establish its ownership on the constructed premises, the Ld.AO is directed to grant cost of construction towards the application of funds.

Accordingly, this ground raised by assessee stands partly allowed for statistical purposes.

11. The additional ground raised by assessee is towards the depreciation claimed on the constructed building. The revenue has denied the depreciation on the premises that the secretary / trustee of the assessee owned the impugned building. We note that the moment assessee establishes the ownership of building, depreciation claimed would be academically stand allowed. Accordingly, we direct assessee to file necessary documents in

respect of the ownership of the building to claim the depreciation.

Accordingly, the additional grounds raised stands allowed partly for statistical purposes.

12. Ground no. 4 is in respect of disallowance of accumulation of income or set apart / exempt u/s. 11(1)(a) of net receipts instead of gross receipts of the Act on the facts and circumstances of the case.

12.1 The Ld.AO denied the benefit of accumulation on the premises that the object portion of the assessee is too vague and cannot be treated for a specified purpose.

12.2 The Ld.AR submitted that, the issue of whether accumulation u/s. 11(1)(a) is to be granted to assessee at 15% of gross receipts have been considered by *Coordinate Bench* of this *Tribunal* in subsequent assessment years 2012-13 in ITA No. 691/Bang/2017 by order dated 06.09.2017. The Ld.DR relied on orders passed by authorities below.

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

12.4 We note that this *Tribunal* observed and held as under:

“4.3.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements referred to. The issue for adjudication before us is whether accumulation of income for application is to be allowed to the extent of 15% of gross receipts or net receipts u/s. 11(1)(a) of the Act.

4.3.2 The assessee claimed accumulation of income for application for charitable purposes u/s. 11(1)(a) of the Act at 15% of gross receipts for the year under consideration. The authorities below, however, are of the view that accumulation will be allowed only to the extent of 15% of the net receipts i.e.; gross receipts less revenue expenditure and not on the gross receipts as claimed by the assessee.

4.3.3 The issue to be decided by us is as to whether for the purpose of accumulation of income for application for charitable purposes u/s. 11(1)(a) of the Act is to be allowed at 15% of gross receipts or net receipts i.e.; gross receipts less revenue expenditure. We find that the issue in question was considered and adjudicated by a coordinate bench of the Tribunal in the case of Mary Immaculate Society and in its order in ITA Nos. 240 & 241/Bang/2015 dated 23.06.2015 held that the assessee is to be allowed accumulation of income for application for charitable purposes u/s. 11(1)(a) of the Act at 15% of gross receipts following the decision of the ITAT Special Bench in the case of Bai Sonabai Hirji Agiary Trust v ITO, 93 ITD 0070 (SB). In its order (supra), the co-ordinate bench has held as under at paras 15 and 16 thereof:-

"15. 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 is 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 fulfillment 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. 2,57,346/- 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 taken 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 outgoings 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."*

16. 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."

*4.3.4 Respectfully following the decision of the co-ordinate bench in the case of *Mary Immaculate Society* (supra), we hold and direct the AO that the accumulation u/s. 11(1)(a) of the Act is to be allowed at 15% of gross receipts, as claimed by the assessee. Consequently, grounds raised by the assessee at S.No:1 to 6 (Supra) are allowed."*

12.5 Respectfully following the above observation in assessee's own case, we direct the Ld.AO to allow the accumulation u/s. 11(1)(a) at 15% of gross receipts as claimed by assessee.

Accordingly, this ground raised by assessee stands allowed.

13. Ground no. 5 is consequential in nature and therefore do not require adjudication.

14. Ground nos. 6 – 8 are general in nature.

Accordingly appeal filed by assessee for A.Y. 2010-11 stands allowed as indicated hereinabove.

15. For **A.Y. 2011-12**, the issues raised are identical with the issues considered for A.Y. 2010-11. We therefore apply the above ratio *mutatis mutandis* to the grounds raised by assessee for A.Y. 2011-12 and the additional grounds raised vide application dated 06.08.2021.

Accordingly, respectfully following above view, the appeal filed by assessee for A.Y. 2012-13 stands allowed as indicated hereinabove.

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

Order pronounced in open court on 21st June, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 21st June, 2022.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore