

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER  
AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1578/PUN/2019  
निर्धारण वर्ष / Assessment Year: 2015-16

DCIT, (Exemption) Circle, Pune.	Vs.	K.E.M. Hospital Society, 489, Sardar Moodliar Road, Rasta Peth, Pune- 411011. PAN : AAATK8155E
Appellant		Respondent

आयकर अपील सं. / ITA No.1579/PUN/2019  
निर्धारण वर्ष / Assessment Year: 2015-16

DCIT, (Exemption) Circle, Pune.	Vs.	National Center For Cell Science, NCCS Campus, Pune University Road, Ganeshkhind, Pune- 411007. PAN : AAATN0848B
Appellant		Respondent

Revenue by : Shri B. Koteswararao  
Assessee by : Shri Nikhil Pathak

Date of hearing : 08.09.2022  
Date of pronouncement : 26.09.2022

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

These are the appeals filed by the Revenue directed against the  
separate orders of Id. Commissioner of Income Tax (Appeals)- 10,

Pune [‘the CIT(A)’] dated 16.07.2019 for the assessment year 2015-16 respectively.

2. Since the identical facts and common issues are involved in both the above captioned appeals, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.1578/PUN/2019 for the assessment year 2015-16 are stated herein.

**ITA No.1578/PUN/2019 :**

4. Briefly, the facts of the case are that the respondent-assessee is a trust formed for the purpose of providing medical relief. It is registered under the Bombay Public Trust Act, 1950 and also under the Societies Registration Act. It was duly registered under the provisions of section 12A of the Income Tax Act, 1961 (‘the Act’). The return of income for the assessment year 2015-16 was filed on 30.09.2015 declaring total income of Rs.Nil. Subsequently, the assessment was completed by the Dy. Commissioner of Income Tax, (Exemptions) Circle, Pune (‘the Assessing Officer’) vide order dated 28.12.2017 passed u/s 143(3) of the Act at total income of Rs.Nil. However, while determining the carry forward accumulation of unspent amount, the Assessing Officer had

calculated at 15% of surplus over the gross accumulation of income as against 15% of the gross receipts as claimed by the respondent-assessee.

On appeal before the ld. CIT(A), the ld. CIT(A) following the decision of the Hon'ble Supreme Court in the case of CIT vs. Programme for Community Organisation, 248 ITR 1 (SC) held that 15% of the gross receipts of income should be allowed to be accumulated and carried forward.

5. Being aggrieved by the decision of the ld. CIT(A), the Revenue is in appeal before us in the present appeal.

6. It is contended that the ld. CIT(A) had grossly erred in holding that the respondent-assessee trust is entitled to accumulate of 15% of gross receipts of income. He further submitted that the ld. CIT(A) had failed to appreciate the decision of the Co-ordinate Bench of the Tribunal in the case of Dawat Institute of Dawoodi Bohra Community vs. ITO, (ITA No.4309/Mum/2005) wherein the decision of the Hon'ble Supreme Court in the case of Programme for Community Organisation (supra) was distinguished.

7. On the other hand, ld. AR supported the order of the ld. CIT(A) and prayed that no interference is called for.

8. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the determination of unspent income to be carried forward, whether 15% of income is to be calculated on gross receipts or net receipts after deduction of the expenditure. The respondent-assessee had claimed accumulation of income for application in future for charitable purpose at 15% of gross receipts. The Id. CIT(A) following the decision of the Hon'ble Supreme Court in the case of Programme for Community Organisation (supra) allowed the accumulation of income at 15% of gross receipts as against 15% of net income allowed by the Assessing Officer. The identical issue has been dealt by the Co-ordinate Bench of Bangalore Tribunal the case of ITO vs. St. Claret Education Society vide ITA No.850/Bang/2016 for A.Y. 2011-12 dated 05.06.2017 (to which one of us AM is party to the order) wherein it was held as follows :-

*"5. Having considered the rival submissions as well as the relevant material on record, at the outset, we note that an identical issue has been considered by the co-ordinate bench of this Tribunal in the case of Moogambigai Charitable and Educational Trust Vs. ACIT (supra) in para 17.4 to 18 as under :*

*" 17.4 We find that the Tribunal in the case of Capuchin Friar Services of Society (supra) has dealt with an identical issue in paras 10 & 11 as under :*

*" 10. We find that the issue is covered by the Co-ordinate Bench decision in the case of Jyothy Charitable Trust in ITA No.662/Bang/2015. The relevant extract is reproduced below:-*

*"15. The third issue that arises for consideration in this appeal is as to whether 15% accumulation for application in future has to be*

*calculated on gross receipts or net receipts after deduction of revenue expenditure. The Assessee claimed accumulation of income for application for charitable purpose at 15% of the gross receipts. The AO was of the view that accumulation will be allowed only to the extent of 15% of the income after revenue expenditure. In other words income to be set apart u/s.11(1)(a) of the Act has to be computed at 15% of the net income i.e., gross receipts minus revenue expenditure and not on the gross receipts as claimed by the Assessee. Since in the case of the Assessee, the gross receipts after revenue expenditure was nil, the AO denied the benefit of accumulation to the Assessee.*

*16. On appeal by the Assessee, the CIT(A) confirmed the order of the AO. Hence ground No-4 raised by the Assessee before the Tribunal. 17. The issue to be decided is therefore as to whether for the purpose of computing accumulation of income of 15% under section 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 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 sec. 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. 2,57,376, 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. u(i)(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. ii(i)(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 take 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 Zoroastrian 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 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."*

*18. 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. Ground No.4 raised by the Assessee is accordingly allowed."*

*11. Following the decision of the co-ordinate bench of the Tribunal, we set aside the order of the CIT(A)."*

*Following the decision of the co-ordinate bench of this Tribunal, we decide this issue in favour of the assessee and direct the Assessing Officer to consider the allowable accumulation of income at 15% of the gross receipts."*

*In view of the above decision of the co-ordinate bench of the Tribunal, we hold that the accumulation under Section 11(1)(a) of the Act is allowable at 15% of the gross receipts."*

9. In view of the above legal position, we are of the considered opinion that the order of the ld. CIT(A) is in consonance with the settled position of law on issue. However, learned CIT(A) had failed to observe that the amount to be carried forward cannot exceed the unspent amount. Thus, the order of learned CIT(A) stands modified to this extent.

10. In the result, the appeal filed by the Revenue in ITA No.1578/PUN/2019 stands partly allowed.

**ITA No.1579/PUN/2019 :**

11. Since the facts and issues involved in both the appeals of the Revenue are identical, therefore, our decision in ITA No.1578/PUN/2019 for A.Y. 2015-16 shall apply *mutatis mutandis*

to the appeal of the Revenue in ITA No.1579/PUN/2019 for A.Y. 2015-16 respectively. Accordingly, the appeal of the Revenue in ITA No.1579/PUN/2019 for A.Y. 2015-16 stands partly allowed.

12. To sum up, both the above captioned appeals of the Revenue stands partly allowed.

Order pronounced on this 26<sup>th</sup> day of September, 2022.

**Sd/-**  
**(S. S. GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 26<sup>th</sup> September, 2022.

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-10, Pune.
4. The CIT (Exemptions), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.