

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. KUL BHARAT, JUDICIAL MEMBER**

**ITA No.5737/DEL/2016  
Assessment Year: 2011-12**

<b>DCIT Circle -2 (1) New Delhi</b>	<b>Vs</b>	<b>Spiritual Regeneration Movement Foundation of India, A-14, Mohan Co-operative Indl. Mathura Road, New Delhi- 110044 PAN No.AAACS8191F</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

**Cross Objection No.11/Del/2020  
(In ITA No.5737/DEL/2016)  
Assessment Year: 2011-12**

<b>Spiritual Regeneration Movement Foundation of India, A-14, Mohan Co-operative Indl. Mathura Road, New Delhi- 110044 PAN No.AAACS8191F</b>	<b>Vs</b>	<b>DCIT Circle -2 (1) New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

<b>Appellant by</b>	<b>Sh. Sanjay Kumar, FCA Sh. Deepak Jain, FCA Sh. Akarsh Garg, Advocate</b>
<b>Respondent by</b>	<b>Ms. Maninder Kaur, Sr DR</b>

Date of hearing:	02/01/2023
Date of Pronouncement:	02/01/2023

## **ORDER**

### **PER N. K. BILLAIYA, AM:**

ITA No.5737/Del/2016 is the appeal by the revenue and Cross objection No.11/Del/2020 is the cross objection of the assessee preferred against the very same order of the CIT(A)-36, New Delhi dated 11.08.2016 pertaining to A.Y.2011-12.

2. Since the appeal and the cross objection have been heard together they are disposed of by this common order for the sake of convenience and brevity.

3. We will first address to the appeal of the revenue. The grounds read as under :-

- 1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law & fact that allowing depreciation of fixed assets is tantamount double deduction as the expenditure on fixed assets is already allowed.*
- 2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in law & fact that Sale of land below the registered value of land may not be charitable and its application u/s 11(1 A).*
- 3. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.*

4. Briefly stated the facts of the case are that the assessee society is engaged in teaching of Transcendental Meditation through its centres situated in various cities in the country. Since activities carried out by the assessee society was charitable activity, it was granted registration under section 12 A of the Income Tax Act, 1961 vide order dated 17.09.1977 and has been found to be eligible for benefit of section 11 of the Act.

5. The first quarrel is in respect of the claim of depreciation on fixed assets which according to the revenue tantamount to double deduction as the expenditure on fixed assets is already allowed.

6. This issue is no more resintegra as the impugned quarrel has been settled in favour of the assessee and against the revenue by the decisions of the Hon'ble Supreme Court in the case of Escort Limited 199 ITR 43 and Rajasthan and Gujarat Charitable Foundation 402 ITR 441. We find that while deleting the addition the CIT(A) at para-4 of his order has followed the decision of the Hon'ble Supreme court, therefore, we do not find any error or infirmity in the findings of the CIT(A). Ground No.1 is accordingly dismissed.

7. The quarrel in ground No.2 relates the sale of land below the registered value of land may not be charitable and its application u/s. 11 (1A) of the Act.

8. Facts on record show that assessee society had sold its land located at Sohagpur, Shahdol in Madhya Pradesh for a consideration of Rs.42.51 lacs only. While the circle rate value of the said land as determined by the Stamp Authorities was at Rs.1.73 crores. Taking a leaf out of the provisions of section 50C, of the Act the AO made the addition of Rs.1.30 crores holding that non application of the surplus fund may not be for charitable activities and its application u/s. 11 (1A) of the Act.

9. The CIT(A) following the decision of the Tribunal in the case of The Upper Chamber of Commerce in ITA No.601/LKW/2011 dated 05.11.2014 deleted the addition made by the AO.

10. Before us the DR strongly supported the findings of the AO and read the relevant part of the assessment order.

11. Per contra the Counsel reiterated what has been stated before the lower authorities.

12. We have carefully perused the orders of the authorities below. We find that on identical set of facts the coordinate Bench in ITA No.5319/Del/2017 and cross objection No.232/Del/2017 has held as under :-

9. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that assessee is a charitable trust, registered u/s 12AA of the Act and, therefore, its taxability is governed by the provisions of Section 11, 12 and 13 of the Act. Section 11 of the Income Tax Act deals with the income computation from property held for charitable and religious purposes. The income under Section 11 (1A), of the Act is required to be computed in case of a capital asset being transferred by the trust and net consideration if utilized for acquiring another capital asset, is not chargeable to tax in proportionate way. The net consideration means as per Explanation (iii) of section 11 (1A) talks about the 'full value of the consideration received or accruing' with certain adjustments. The net consideration is not required to be substituted by the fair market value of the capital asset transferred. The provisions of Section 50C of the Act falls under Chapter IV, Sub Chapter E under the head capital gains for the \* computation of capital gains. It talks about the replacement of full value of the consideration as stated under Section 48 of the Act. The income of the assessee is computed under Section 11 (1A) of the Act and not under Chapter IV (E) of the act. Hence , in case of charitable trust whose income is computed u/s 11,12 and 13 of the act, provision of section 50 ,C does not apply. There is one more reason to hold so because that consideration, which has not been accruing to the trust or received by the trust but enhanced because of the provisions of Section 50C of the Act, could never be invested in new property. Further the issue is squarely covered by the decision of the Lucknow Bench in the case of ACIT Vs. The Upper India Chamber of Commerce in

*ITA. No. 601/LKW/2011 dated 5.11.2014 and in the case of ACIT Vs. Dwarikadhish Temple Trust, Kanpur, in ITA. Nos. 256 & 257/LKW/2011 dated 21.08.2014. in the case of ACIT vs. Shri. Dwarikadhish Temple Trust, Kanpur in I.T.A. No. 256 & 257/LKW/2011, in which the Tribunal has held that in case the income is to be computed as per subsection (1A) of section 11 of the Act, if the net consideration for transfer of capital asset of a charitable trust is utilized for acquiring new capital asset, then the whole of the capital gain is exempt.*

*10. Accordingly, we do not find any merit in the appeal of the Id. Assessing Officer and the same is dismissed.*

13. We find that the CIT(A) has followed the order of this Tribunal in the case of the Upper India Chamber of Commerce (supra), therefore, we do not find any error or infirmity in the order of the CIT(A) the ground No. 2 of the appeal is dismissed accordingly.

14. In the result, the appeal of the revenue is dismissed.

**Cross Objection No.11/Del/2016 ( A.Y. 2011-12)**

15. Will now address to the cross objection of the assessee.

16. The Only grievance of the assessee is that the CIT(A) was not justified in directing the AO to verify whether the amount was taken on the income side in the year in which it had been received and only then allow the repayment of the loan.

17. The under lying facts in the issue are that the assessee society raised loans of Rs.1.25 crores and Rs. 3.99 crores in A.Y.2009-10 and 2010-11 which were utilized in its objects including acquisition of fixed assets in furtherance of its charitable objectives. Out of which loans of Rs.4.75 crores were repaid and such repayment of loans was claimed as application of income.

18. During the year under consideration loan of Rs. 4.75 crores were repaid and such repayment of loan was claimed as application of income.

19. The said claim of repayment of loan was rejected by the AO after making following observations :-

*“5. During the course of assessment proceedings, it was also noted that the assessee has claimed an amount of Rs. 4,75,00,000/- or account of refund of loan as application.*

*“5.1 This above fact was confronted to the assessee vide, order sheet entry date 24.03.2014. The assessee was asked to explain that whether the loan raised has been shown as income in the year of raising of such loan and if not, then show cause that why the claim of loan refund/ repayment may not be disallowed as the same amounts to double deduction in view of the fact that the assessee has claimed capital expenditure as well as revenue expenditure as application. The assessee vide reply dated 25.03.2014 has contended that -*

*"The Assessee society has taken loan in the preceding years to carry on its activities and pursue its objects. The loans taken are a liability and are normally paid back as and when the*

*funds are available with the society. Such loans are duly reflected in the Balance sheet and a liability cannot be treated as income of the society.*

*The Board Circular No. 100 dated 24.01.1973, F. No. 195/1/72-I.T. (A.I.) is relevant in this context is reproduced hereunder :-*

*Repayment of a debt incurred for charitable purposes by a charitable trust and loans advanced by educational trusts - Application of income - Section 11 of the of the Income tax Act requires 100% of the income of a charitable and religious trust to be applied for religious and charitable purposes to be entitled to the exemption under the said section. Two questions have been considered regarding the application of income*

*(i) Where a trust incurs a debt for the purposes of the trust, whether the repayment of the debt would amount to an application of the income for the purposes of the trust? and*

*(ii) Whether loans advanced by an education trust to students for higher studies would be treated as application of income for charitable purposes?*

*'Justification of application of income by way of donation and by way of refund of loan Board has decided that repayment of the loan originally taken to fulfill one of the objects of the trust will amount to an application of the income for charitable and religious purposes. As regards the loans advanced for higher studies, if the only object of trust is to give interest-bearing loans for higher studies, it will amount to carrying on of money-lending business. If, however, the object of the trust is advancement of education and granting of scholarship loans as only one of the activities carried on for the fulfillment of the*

*objectives of the trust, granting of loans, even interest-bearing, will amount to the application of income for charitable purposes. As and when the loan is returned to the trust it will be treated as income of that year. ’*

*The above position has also been confirmed by various courts in the series of Judicial pronouncements. Some of these are as under –*

*(i) CIT Vs. Janmabhumi Press Trust (2000) 242 ITR 457 (Kar.)*

*(ii) DIT (Exemption) Vs. GKR Charities (2013) 214 Taxman 555*

*5.2 The assessee’s reply has been duly perused and considered. However, the assessee’s contention that it is a liability and hence cannot be shown as income in its year of raising explains that an income which has not been offered in its income & expenditure account cannot be claimed as application. The assessee further claims that the assessee is required to repay the loan and hence is claimed as application is not tenable as per the provisions of the Act. The assessee conveniently ignores the following facts which are of paramount importance to determine that whether such a claim is as per the legal provisions or not -*

*(i) While examining the claims of repayment of loans, it is important to verify whether the assessee has claimed capital expenditure made out of such loans as application in its return of income without showing the loan as receipt / income or not. If the assessee has claimed capital expenditure out of such loans as application without showing the loan as receipt / income then the claim of repayment of loan cannot be allowed. In this regard the CBDT considered two questions regarding the application of income. The two questions are :*

*(a) Where a trust incurs a debt for the purposes of the trust, whether the repayment of the debt would amount to an application of*

*the income for the purposes of the trust; and*

(b) *Whether loans advanced by an educational trust to students for higher studies would be treated as application of income for charitable purposes.*

*Consequently the CBDT issued a circular No. 100 [F. No. 195/7/72-IT(A-I)], dated 24-1-1973. The relevant part of the circular is reproduced below -*

*"The Board has decided that repayment of the loan originally taken to fulfill one of the objects of the trust will amount to an application of the income for charitable and religious purposes. As regards the loans advanced for higher studies, if the only object of the trust is to give interest-bearing loans for higher studies, it will amount to carrying on of money-lending business. If, however, the object of the trust is advancement of education and granting of scholarship loans as only one of the activities carried on for the fulfillment of the objectives the trust, granting of loans, even if interest-bearing, will amount to the 'implication of income for charitable purposes. As and when the loan is returned to the trust, it will be treated as income of that year.*

*The circular clarifies that repayment of loan taken to fulfill one of the objects of the trust will amount to an application of income for charitable and religious purposes. However it does not become clear from the circular that whether repayment of loan is to be allowed as application in cases where the assessee has claimed capital expenditure out of such loan as application of income without showing the same as receipt / income.*

*The clarification did not mention that whether such loan has to be shown as income, in the year in which the loan was raised, before repayment is claimed as application or not. In this regard the Department's view was conveyed to the CAG in May 2103 that loan originally taken has to be taken as income / receipt before application is claimed against it. Without treating as income,*

*application cannot be claimed. The Board's instruction has clarified the allowability of repayment in respect of the loan taken. There was no doubt that the same had to be shown as receipt before claiming application.*

- (ii) *From the above logically the following facts emerge -*
- (a) *The assessee claims capital expenditure (which is actually the utilization of loans raised for such purposes) as application. This actually reduces the value of the capital asset to Nil.*
  - (b) *Many assessee's claim depreciation on capital assets as application. This amounts to double deduction in view of the fact that the value of the asset has already become nil.*
  - (c) *Without showing the loan raised in its year of raising, the assessee claims loan repayment as application. This amounts to triple application and hence triple deduction.*
  - (d) *The assessee has also conveniently not considered the clarification of the CBDT regarding repayment of educational loans, which reads – “ the object of the trust is advancement of education and granting of scholarship loans as only one of the activities carried on for the fulfillment of the objectives of the trust, granting of loans, even if interest- bearing, will amount to the application of income for charitable purposes. As and when the loan is returned to the trust, it will be treated as income of that year”. The last sentence is clear and unambiguous and needs no elaboration.*
- (iii) *The assessee's reliance on the quoted case laws will not help the assessee as the factual & legal position as stated above squarely makes it clear that repayment of loan cannot be allowed as application if such loan has not been shown as income / receipt in its year of raising.*

5.3 *In light of the detailed discussion in para 5.1 & 5.2 above the*

*assessee the assessee's claim of repayment of loan amounting to Rs.4,75,00,000.00 as application is disallowed and added back to the income of the assessee. Penalty proceedings u/s. 271 (1) (c) of the Act is being separately initiated for furnishing inaccurate particulars of such income.*

20. Before the CIT(A) the assessee raised objections against the said action of the AO but the CIT(A) was not convinced with the claim of the assessee in toto and held as under :-

**“ii.Repayment of loan as application:** *The AO has disallowed an amount of Rs.4.75 crore which was claimed by the assessee as repayment of loan. As submitted by the assessee, it is clear from the circular no. 100 of 24.01.1973 that the repayment of loan taken to fulfil the objectives of the trust will amount to application of income. However, it is observed that the circular has not made clear about whether the loan at the time of being taken should be treated as income. The repayment is therefore a valid application but only when it has been taken as available income in the year of being taken, otherwise, it will be a situation where an amount has been spent without ever having been received. It will also lead to a situation where, without ever having taken it into an income, the amount will once be allowed when it is spent for the purpose for which loan is taken and then again when it is repaid. Logically therefore repayment can be allowed only when the loan taken has been shown as available income by the assessee in the year in which it was taken. The reasoning of the assessee that loan taken are a liability and are necessary to be repaid back and cannot by any stretch of imagination to be treated as income is correct to the extent when it is applied to a commercial organisation. In the case of a charitable organisation, an amount can be spent/applied only*

*when it is received And therefore even a loan will be an amount received to be spent for the purpose of charity .The AO is directed to verify whether the amount was taken on the income side in the year in which it was received and only then allow the repayment of loan as application. In case the receipt of loan has not been shown as income, the disallowance is upheld.”*

21. Before us the Counsel reiterated what has been stated before the lower authorities and the DR strongly supported the findings of the AO/ CIT(A). We have carefully perused the orders of the authorities below. The quarrel is where a trust incurs a debt for the purposes of the trust, whether the repayment of the debt would amount to an application of the income for the purposes of the trust. This issue came up before the CBDT way back in 1973 and the CBDT came out with the Circular No.100 which read as under :-

**CIRCULAR NO. 100**

**Repayment of a debt incurred for charitable purposes by a charitable trust and loans advanced by educational trusts-**

**Application of income**

**24/01/1973**

**CHARITABLE TRUSTS - SECTIONS 11**

*Sec. 11 of the IT Act requires 100% of the income of a charitable and religious trust to be applied for religious and charitable purposes to be entitled to the exemption under the said section. Two questions have been considered regarding the application of income :*

- (i) *where a trust incurs a debt for the purposes of the trust, whether the repayment of the debt would amount to an application of the income for the purposes of the trust; and*
- (ii) *whether loans advanced by an educational trust to students for higher studies would*

*be treated as application of income for charitable purposes.*

*2. Board has decided that repayment of the loan originally taken to fulfil one of the objects of the trust will amount to an application of the income for charitable and religious purposes. As regards the loans advanced for higher studies, if the only object of the trust is to give interest bearing loans for higher studies, it will amount to carrying on of money lending business. If, however, the object of the trust is advancement of education and granting of scholarship loans as only one of the activities carried on for the fulfilment of the objectives of the trust, granting of loans even interest bearing will amount to the application of income for charitable purposes. As and when the loan is returned to the trust, it will be treated as income of that year.*

*SOURCE : Reported in (1973) 88 ITR (St) 66*

22. A perusal of the above show that the board is not clear about whether the loan at the time of being taken should be treated as income. In our understanding of the facts and the law we are of the considered view that unless such debt is taken as part of receipts by the charitable trust only then the repayment of such debt would be accepted as application of income. On this understanding we do not find any error or infirmity in the directions of the CIT(A), the cross objection by the assessee is accordingly dismissed.

23. Decision announced in the open court on .01.2023.

Sd/-  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*NEHA\*

Date:- .01.2023

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**