

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1559/MUM/2023
Assessment Year: 2012-13

Dy. CIT (Exemption)-2(1),
Room No. 608, 6th floor, MTNL
Building, Cumballa Hill,
Mumbai-400026.

Vs. Trans Thane Creek Waste
Management Association,
P-128, Next to L & T Infotech
Ltd., Shill Mahape Road,
Navi Mumbai-400701.

PAN NO. AADCT 4375 R
Respondent

Appellant

Assessee by : None
Revenue by : Mr. Prakash D. Choughule, DR

Date of Hearing : 17/07/2023
Date of pronouncement : 25/07/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is preferred against order dated 09.03.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2012-13, raising following grounds:

“1. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in allowing the accumulation at 15% of gross receipts instead of net income.”



2. Briefly stated facts of the case are that the assessee was engaged in the business of Environmental protection through land fill etc. In the assessment completed u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 20.03.2015, the total income was determined at Nil. Subsequently, the Assessing Officer issued show cause notice proposing to rectify the assessment order , which was passed u/s 143(3) of the Act, on the ground that the assessee trust was allowed accumulation u/s 11(1) of the Act on gross receipt instead of net income which resulted in under assessment of income by Rs.1,71,17,333/-. The assessee objected for rectification, however, the Ld. Assessing Officer in his order u/s 154 of the Act dated 04.09.2019 restricted the accumulation of income u/s 11(1) of the Act on net income. On further appeal, the Ld. CIT(A) allowed relief to the assessee observing as under:

“5. Decision

1. The assessee has raised six grounds of appeal. Ground Nos. 1, 4, 5 and 6 are general in nature and no specific adiudication is called for. Hence, the same are dismissed.

2. Ground No. 2 & 3 relates to disallowance of accumulation u/s 11(1)(a). After carefully considering the e-submission filed by appellant and upon perusal of the order of the assessing officer. The appellant is registered as a company under section 25 of the Companies Act. 1956 as per the Certificate of incorporation granted on 0-11-1998. The appellant is also registered as a charitable institution under section 12A of the Income Tax Act.

The main objects of the appellant as per Memorandum of Association areas under:



a) To constitute and maintain an organization for treatment of Industrial solid wastes generated in the area of operation

b) To act as an advisor for the process and treatment of pollution such as Air Pollution, Water Pollution, Waste Water Pollution, Sewage, Industrial Hazardous Solid Wastes, Chemicals, Gases Effluents from Industries and all other kinds of environmental pollution. Accordingly such income was claimed exempt under section 11, being a registered charitable organization. However, the assessing officer passed the rectification order u/s 154 of IT Act stating that there was a mistake apparent from record in the assessment order and restricted accumulation of 15 percent u/s 11(1)(a) to Rs. 15814824 as against Rs. 31990443/- allowed in the assessment order u/s 143(3) of the IT Act. As per Section 11(1) of the IT Act, the existing provisions related to, two kinds of accumulation are possible:

1. Accumulation upto 15% of income under section 11(1). Such accumulations are not subject to application within a maximum permissible period of 5 years. In -other words, 15% of income can be retained by a charitable organisation without applying it for charitable purposes in the year in which the income was accrued. This 15% accumulation is an indefinite accumulation and the organisation does not have to apply it for charitable purposes in subsequent years. It can be retained as a part of its corpus of capital.

2. Accumulation beyond 15% of income under section 11(2). Such accumulations are subject to application within a maximum permissible period of 5 years. In other words income in excess of 15% cannot be retained by a charitable or religious organisation. If the income is not spent in the current year then the assessee is permitted to spend it within the next 5 years.

Further, the appellant submitted that the accumulation is with respect to the income of the appellant and not receipts net of application of income. The receipts of Rs. 21,32,69,612/- is the income for



the purposes of accumulation of as per section 11(1). From the reading of section 11 (1), it is clear that the benefit of accumulation of 15% of income should be calculated with reference to the total receipts of the charitable institution and not with reference to income after reducing the amount applied. Therefore, the appellant has rightly calculated the accumulation amount of Rs. 3,19,90,442 being 15% of Rs. 21,32,69,612 as per the provisions of section 11(1). Accordingly, I have relied on the decision of Mumbai Special Bench in the case of Sai Sonabai Hiri Trust Vs. ITO on 22 September 2014 in the favour of assessee. Hence, the A is directed to delete the addition the addition and allow the accumulation at 15% of gross receipts. Ground No. 2 & 3 of appeal are allowed.”

3. Despite notifying, before us none attended on behalf of the assessee and therefore appeal was heard ex-parte qua the assessee after hearing arguments of the Ld. Departmental Representative (DR).

4. We find that under the provisions of section 11(1) of the Act the accumulation of the income @ 15% has been permitted on income received from the property, which means gross receipt has to be considered for the purpose of the accumulation of income. The provisions of the Act are clear and there is no ambiguity in said provisions. For ready reference said provisions are reproduced as under:

“11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—



(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property;

(c) income derived from property held under trust—

(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.[subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or



modes specified in sub-section (5) maintained specifically for such corpus]"

4.1 In view of the provisions of the Act, we don't find any error in the order of the Ld. CIT(A) on the issue in dispute which has been passed as per the provisions of the Act and therefore, we accordingly, we uphold the same. The sole ground raised by the Revenue is accordingly dismissed.

5. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 25/07/2023.

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 25/07/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai