

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

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

ITA Nos. 359 & 360/Bang/2023
Assessment Years : 2009-10 & 2011-12

M/s. Sindhi Youth Association, Sindhi Hospital Road, Sampangiramanagar, Bangalore – 560 025. PAN: AABTS6116N	Vs.	The Assistant Director of Income Tax (Exemptions), Circle – 17(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Madhusudhan, Advocate
Revenue by	:	Shri Nischal .B, Addl. CIT (DR)

Date of Hearing	:	19-07-2023
Date of Pronouncement	:	25-08-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals are filed by assessee against separate orders passed by the National Faceless Appeal Centre (NFAC), Delhi for A.Ys. 2009-10 and 2011-12.

2. The common issue that has been raised by assessee is in respect of denying the carry forward of excess expenditure over income incurred during the relevant AYs. For the sake of convenience, we reproduce the grounds raised by assessee for A.Y. 2009-10.

“1. The order of the learned Commissioner of Income Tax (Appeals) passed under section 250 r.w.s 254 of the Income Tax Act, 1961 (hereinafter referred to as "Act") dated 14.06.2022 for Assessment Year 2008-09 in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2. The Appellant denies itself liable to be assessed on a total income of Nil as against the returned income of carry forward of excess application expenditure of a sum of Rs. 5,20,941/- under the facts and circumstances of the case.

3. The learned Commissioner of Income Tax (Appeals) is not justified in denying the appellant the carry forward of excess expenditure over income incurred in the current year on the facts and circumstances of the case.

4. The learned Commissioner of Income Tax (Appeals) failed to appreciate that the appellant is a charitable organisation registered under section 12A of the Act w.e.f 01.02.1999 and consequently the benefit under section 11 of the Act ought to have been extended and appellant ought to have been allowed to carry forward the excess application of income on the facts and circumstances of the case.

5. The learned Commissioner of Income Tax (Appeals) is not justified in holding that for the impugned assessment year the appellant has claimed adjustment of brought forward expenses in the current year which is contrary to facts and consequently passed a perverse order on the facts and circumstances of the case.

6. The learned Commissioner of Income Tax (Appeals) is not justified in denying the appellant the carry forward of brought forward excess application of income of earlier years on the facts and circumstances of the case.

7. 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.

8. 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.”

3. We note that these are appeals remanded by this *Tribunal* in the first round of litigation to the Ld.CIT(A) to carry out necessary verification as to whether the expenditure incurred in excess of income was in the nature of religious or charitable purposes and thereafter to consider the claim of assessee.

4. At the outset, the Ld.AR submitted that there is delay of 264 days in filing of the present appeals.

4.1 The assessee has filed condonation petition vide affidavit dated 19.06.2023 seeking the delay to be condoned.

4.2 The assessee has submitted as under:

“8. The order of the National Faceless Appeal Centre [NFAC] was served on the Appellant by e-mail on 14.06.2022. However, the employee who was handling the statutory compliances, Ms. Ramya, was on intermittent leave due to health issues and consequently, the order received by way of email was not acted upon at that point in time. In fact, the concerned employee has taken a long leave and is under medical treatment at NIMHANS currently. The order was not brought to the notice of the Finance Manager for further action.

9. Subsequently, the professional who was engaged for advice and preparation of submissions before the National Faceless Appeal Centre [NFAC] enquired regarding the status of the matter. It was only then, upon enquiry, did the Finance Manager of the Society come to the knowledge that the appeal pending before the National Faceless Appeal Centre [NFAC] was dismissed vide order dated 14.06.2022. The Finance Manager came to the knowledge regarding the order of the National Faceless Appeal Centre [NFAC] during the beginning of October 2022 close to the date of the Annual General Meeting. There was an expected change in the officer bearers and the committee during the said Annual General Meeting and consequently, there was an unintentional lapse on the part of the Finance Manager in bringing to notice of the erstwhile Committee.

10. There was a change in the office bearers team which was effected during the Annual General Meeting which was held in October 2022. The new office bearers and

committee members were not in well versed with the pending issues that were left unattended and were putting in their best efforts to cope with the new responsibilities cast upon them.

11. Subsequently, the new office bearers and committee members were informed regarding the order of the National Faceless Appeal Centre [NFAC]. The Committee immediately approached the present counsel for advice and was advised to file an appeal before this Hon'ble Tribunal with an application for condonation of delay immediately.

12. The Appellant after obtaining proper professional advice from the present counsel, has put all efforts for preparation and filing of the present appeal within a week's time thereby giving rise to a delay of 264 days."

4.3 In view of the above, the assessee could not file the appeals before this *Tribunal* well in time and by the time the appeal papers were prepared for filing, there arose delay of about 264 days in filing these present appeals before this *Tribunal*. The reason for the delay in filing the present appeals was due to reason beyond the control of the assessee.

He thus prayed for the delay to be condoned.

4.4 The Ld.DR though objected however could not controvert the reasoning given by the Ld.AR for the delay that was caused in filing the present appeal.

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

4.5 In our opinion there is a sufficient cause for condoning the delay as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 in support of his contentions.

4.6 It is also submitted by the Ld.AR that there is no malafide intention on behalf of assessee in not filing the present appeal within time.

The Ld.DR on the contrary opposed the delay to be condoned.

4.7 Considering the circumstances under which the delay was caused in filing the present appeal before this *Tribunal* and that nothing contrary could be established by the revenue before us.

4.8 We place reliance on following observations by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 wherein, *Hon'ble Court* observed as under:-

"The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits ". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

.....1. Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

4.9 Considering the submissions by both sides and respectfully following the observation by *Hon'ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeals as it is not attributable to the assessee.

Accordingly, the delay in filing the present appeals stands condoned.

5. The Ld.CIT(A) based on the directions of this *Tribunal* called for details for the purpose of examining the nature of expenses incurred by assessee in the years 1999-2000 to 2001-2002.

6. Assessee in response to the notices issued by NFAC submitted as under:

“9. The only written submission is as under:

“We wish to bring the following facts in a chronological order for your kind attention:

1. M/S. Sindhi Youth Association (hereinafter referred to as 'SYA') is a registered as a society by Registrar of Societies, Mysore in the year 1962. SYA is also registered under section 12A of the Income Tax Act 1961. Also SYA has been granted 80G registration as well. (copy of Registration certificate, Registration certificate u/s 12A and renewal of 80G approval are attached as annexure 1 for your kind consideration.)

2. SYA is a charitable organization, providing medical services, free of charge and at concessional rates to needy individuals, and engaged in organizing other medical awareness camps in rural and other areas, since its inception.

3. SYA has been claiming and assessed as charitable association since its inception.

4. The accounts of the assessee have been audited every year by an independent auditor and has furnished report confirming that, all the expenses are for its objects namely charitable purposes. (Copy of audit report of 1999 to 2001 are attached as annexure 2)

5. The assessing officers have concluded the scrutiny assessments and passed orders allowing the exemption of income under section 11, whereby confirming that all the expenses are for charitable purposes. At no point of time the AOs have disallowed any expenditure as otherwise.

6. Even in the assessment order for AY 2008-09, the AO has not accepted the set off of earlier year expenditure against current year's income. But at no point of time, the Ld. AO has raised any issue with regard to expenditure as other than charitable purpose. (Copy of the order of AO is attached as annexure 3)

7. We are attaching a copy of By-Laws of the Association (SYA) which clearly indicate that the organization is purely for charitable purposes. (annexure 4)

8. Further, we humbly submit that,

i. granting of registration under section 12A, its periodic renewal.

ii. granting 80G approval and its renewal, and

iii. various assessment orders allowing deduction under section 11.

iv. audit reports in Form 10B of the Income Tax Act, by an independent auditor for all the years till now.

Itself shall vouch that the assessee is carrying on charitable activities and the expenses are all for charitable purposes.

We wish to submit that, we shall be glad to submit any further information that you may seek in this regard.

In view of the limitation of size of enclosures, we are unable to submit the copies of printed annual reports of various years. However, we shall be glad to provide the same at your instruction in due course.

In view of the above, we humbly submit for consideration of the above information and conclude that the all the expenditure is only for charitable purposes and other than that the assessee has not spent any other expenditure and allow the set off of excess expenditure in earlier years against the income of this year.....”

7. The Ld.CIT(A) noted that assessee did not furnish any details and dismissed the appeal by observing as under:

“10. From the above reproduced written submission as well as contents of this order, supra, it is clear that the appellant doesn't have any material to establish the expenses of the said earlier years, let alone having the material to establish that the expenditures were only for charitable or religious purposes. In the written submissions, the appellant is only harping on the fact that in the assessment order under consideration. AO had simply accepted the appellant-assessee's claim of it being a charitable organization. Nowhere in the assessment order, AO has recorded any finding that the appellant-assessee's expenditures and activities were duly examined and were found to be truly for charitable purposes, duly justifying the Certificate of Registration issued u/s 12A of the Act by CIT, Bangalore on

31.03.1980. Since AO didn't make any factual verification and restricted the assessment proceedings to the legal issue whether the brought forward expenses could be set-off against current year's income and be treated as application of income, the appellant has taken the plea that at no point of time the AO raised any issue with regard to expenditure as other than charitable purpose. it has to be assumed that in the past also, for all assessment years, the appellant was incurring all expenditure for charitable purposes only.

11. Firstly, such a reasoning can't be accepted as it is a pure presumption. Secondly, the Hon. ITAT have specifically directed to examine the nature of expenditure for the years 1999-00, 2000-01 to 2001-02. How can examination of expenditure to be carried out without receiving the details of the expenditures?

12. In view of the above, I have no option but to hold that there is no evidence to conclusively establish that the expenditure incurred during the years 1999-00, 2000-01 to 2001-02 were only for charitable purposes. Hence, I uphold the order of AO.”

8. The Ld.AR submitted that the registration u/s. 12A has not been cancelled in any of the years under consideration or in the preceding assessment years. He submitted that the Ld.AO had made categorical observation regarding the primary objectives of the assessee to be charitable in nature and towards general welfare of the society. This observation has been made after detailed verification of the copy of the memorandum and 12A registration in the light of the various details towards expenditure that was supported by bills. The Ld.AO only disputed that the excess application cannot be carried forward under the act and that the application of income at the rate of 85% in any year has to be computed on the income of the trust during that year.

9. It is submitted that the assessee had spent in excess of Rs.5,20,941/- for A.Y. 2009-10 and Rs.97,07,641/- for A.Y. 2011-12. He submitted that the requirement u/s. 11(1)(a) do not

need the income to have been applied for charitable or religious purposes in the year in which the income arose.

10. The Ld.AR submitted that application for charitable purpose u/s. 11(1)(a) takes place in the year in which the income is adjusted to meet the expenses incurred for charitable or religious purposes. He relied on the following decision in support of this proposition.

- *CIT Vs. Maharana of Mewar Charitable Foundation 164 ITR 439 (Raj)*
- *CIT Vs. Shri Plot Swetamber Murti Pujak Jain Mandal 211 ITR 293 (Guj.)*
- *CIT Vs. Institute of Banking Personnel Selection 264 ITR 110 (Bom)*

On the contrary, the Ld.DR relied on the orders passed by authorities below.

11. We have considered his submission. Section 11(1)(a) does not contain any words of limitation to the effect that the income should have been applied for charitable or religious purpose in the year in which the income has arisen. The application for charitable purposes as contemplated in section 11(1)(a) takes place in the year in which the income is adjusted to meet the expenses incurred for charitable or religious purposes. Hence, even if the expenses for such purposes have been incurred in the earlier years and the said expenses are adjusted against the income of a subsequent year, the income of such subsequent year can be said to be applied for charitable or religious purposes in the year in which such adjustment takes place. In other words, the set-off of excess of expenditure incurred over the income of earlier years against the income of a later year will amount to application of income of such later year.

Further, the decision of *Coordinate Bench of this Tribunal* in case of *DDIT(E) vs. Jyothy Charitable Trust* in ITA No. 522/Bang/2014 by order dated 11.06.2015 has been affirmed by *Hon'ble Karnataka High Court* in ITA No. 707/2015 by judgment dated 14.08.2018. It is also noted that this *Tribunal* when remanded the issue to the Ld.CIT(A) for necessary verification, this decision of *Hon'ble Karnataka High Court* in case of *CIT & Ors. vs. Jyothy Charitable Trust (supra)* was not available. Therefore we do not find it necessary to look into the nature of expenses incurred in the preceding assessment years that has been claimed as an adjustment of excess amount for the years under consideration. Based on the above discussion, respectfully following the decision of *Hon'ble Karnataka High Court* in case of *CIT & Ors. vs. Jyothy Charitable Trust (supra)*, we direct the Ld.AO to allow the claim of assessee in accordance with law.

Accordingly, the grounds raised by assessee stands allowed for both the years under consideration.

In the result, both the appeals filed by assessee stands allowed for the years under consideration.

Order pronounced in the open court on 25th August, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 25th August, 2023.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore

By order

Assistant Registrar,
ITAT, Bangalore